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IMMIGRATION REFORM AND CONTROL ACT OF 1983

HEARING BEFORE THE COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 1510

JUNE 15, 1983

Serial No. 98-14

CIS RECORD ONLY:



Printed for the use of the Committee on Agriculture

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1983

24-020 O

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IMMIGRATION REFORM AND CONTROL ACT OF 1983

WEDNESDAY, JUNE 15, 1983

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The committee met, pursuant to call, at 10:05 a.m., in room 1300, Longworth House Office Building, Hon. E (Kika) de la Garza (chairman of the committee) presiding.

Present: Representatives Rose, Harkin, English, Panetta, Huckaby, Glickman, Whitley, Coelho, Stenholm, Volkmer, Hatcher, Tallon, Staggers, Durbin, Evans of Illinois, Olin, Penny, Madigan, Coleman, Hopkins, Hansen, Stangeland, Roberts, Emerson, Skeen, Morrison, Gunderson, Evans of Iowa, Chappie, and Franklin.

Staff present: A. Mario Castillo, staff director; Robert M. Bor, chief counsel; John E. Hogan, minority counsel; Mark Dungan, minority associate counsel; William E. O'Conner, Jr., assistant minority staff director; Peggy L. Pecore, clerk; Steven McCoy, Anita R. Brown, Gerald R. Jorgensen, Bernard Brenner, and Eugene Moos.

OPENING REMARKS OF HON. E (KIKI) de la GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

The CHAIRMAN. The meeting will be in order.

We begin the public hearing on the consideration of H.R. 1510, the Immigration Reform and Control Act of 1983.

If there's no objection, I have a short statement for the record, and, if there's no objection, we'll allow other members to submit statements for the record if they so desire. Also, I might advise all of the witnesses that your full statements, without objection, will appear in the record. We would hope to finish the hearing today, so anything that you can do to assist us to expedite the process would be appreciated.

We hope that you might be able to summarize your statements, being protected by having the full statement appear in the record.

[The prepared statement of Mr. de la Garza follows:]

STATEMENT OF HON. E (KIKI) DE LA GARZA
ON H.R. 1510, THE IMMIGRATION REFORM AND CONTROL ACT OF 1983

I am pleased to call to order the hearing on H.R. 1510, a bill to revise and reform the Immigration and Nationality Act, and for other purposes, as reported by the House Judiciary Committee. The hearing is held for the purpose of receiving testimony on those aspects of the bill that relate to issues under the jurisdiction of the Committee on Agriculture.

For those of you who may not be aware, the Committee has a history of involvement on legislation relating to the temporary entry of agricultural workers from abroad to assist in the production of agricultural commodities. For example, the so-called "bracero" program in effect between 1951 and 1964 involving the use of agricultural workers from Mexico pursuant to arrangements between the governments of the United States and Mexico had its root in Title V of the Agricultural Act of 1949--legislation that originated with the Agriculture Committees of Congress.

The provisions of H.R. 1510 in which we are interested in hearing testimony are essentially threefold in nature.

First are the provisions that relate to the entry of agricultural workers. Essentially, they provide for streamlining the so-called H-2 provisions of current law established for seasonal workers in agriculture. Under the bill as reported by the Judiciary Committee, the employer must apply to the Secretary of Labor no more than 50 days in advance of need, asking for foreign

workers. The Secretary of Labor is required to provide a decision on the application no later than 20 days in advance of need. If the Secretary of Labor determines that a certain number of qualified U.S. workers will be available at the time needed, but at the determined time those workers are not qualified and available, an expedited procedure to determine need would be available.

The bill also establishes a three year phased down transition program for agricultural producers to employ aliens who would not otherwise be entitled to enter or work in the United States. H-2 and "transition" workers would be guaranteed certain benefits such as housing or a housing allowance and workers compensation (to be provided by the employer if not available under a state program).

Second are the provisions for employer sanctions insofar as they apply to producers of agricultural commodities. The bill makes it unlawful for any employer knowingly to hire for employment or to recruit for a fee, after the date of enactment, any alien not authorized to work in the United States.

Employers found by the Immigration and Naturalization Service (INS) to have an undocumented alien in their employ (or to have recruited or referred an undocumented alien) will be ordered by the INS to have all prospective employees show them appropriate identification as a condition of hiring. Any employer who does not meet the requirements for checking documents is liable to a civil fine of \$500 per employee hired.

In addition, there is established a graduated penalty structure for hiring unauthorized aliens -- first offense: warning; second offense: \$1,000 civil fine per unauthorized alien hired; third offense: \$2,000 civil fine per unauthorized alien hired; fourth offense: \$3,000 criminal fine per unauthorized alien hired or one year in jail, or both. Also, the Attorney General may seek an injunction to stop "pattern or practice" violators.

Finally, the bill would make undocumented aliens whose presence in the United States would be legalized under the bill ineligible for food stamp benefits, among others, for a five-year period.

At this time I would be pleased to welcome our first witness, Congressman Pashayan of California.

The CHAIRMAN. Our colleague from California, Charles Pashayan, we welcome you to the committee and we'll hear from you at this time.

STATEMENT OF HON. CHARLES PASHAYAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PASHAYAN. Thank you very much, Mr. Chairman, and I salute you and your committee for taking the initiative in calling for hearings on the Immigration Reform and Control Act of 1983 and how it shall impact on agriculture.

And I totally agree in your observation that these are difficult and complex issues. The question I pose to you and members of this committee is whether or not agricultural needs, both of the employer and employee, will be fully met under Simpson-Mazzoli. That is the issue which is all important in these deliberations.

Congress has fostered and will continue to foster domestic agriculture, as indeed it must, but unless there is a work force in place when needed, much of what is grown will never reach the consumer. That work force, which will necessarily be made up of some domestic but mostly foreign workers, must enjoy the basic protection accorded all workers.

In my view, this should extend to wages, working conditions, and benefits, plus the maximum freedom—the freedom to choose an employer of their liking. The plight of today's undocumented farmworker, who struggles with none of these fundamental economic rights, is horrible.

Indeed, the press has verbally and visually shown us terrible examples, stories of undocumented workers being drowned as they fled from Immigration and Naturalization Service officers, of the tragic deaths of many who were abandoned at or near the border

in attempting entry into this country, and of others who were so fearful of being turned in to Federal authorities that they reluctantly performed onerous and unfair tasks without question.

I readily admit that undocumented workers make up the vast majority of current field workers—estimates range from 50 to 100 percent. However, I will point out that the average wage in California is above \$4.35 per hour, compared to the national average of \$3.52. Indeed, there is documentation by the Western Growers Association that some lettuce workers in California are earning in excess of \$25,000 per year.

The charge often made in the past few years is that the agricultural jobs now being performed by the undocumented foreign workers are jobs being taken from the domestic worker. Mr. Chairman, I do not accept that, and the record, I think, will show that the domestic worker will not necessarily join the transit farm work force in enough numbers despite his unemployment condition.

In fact, efforts have been made at developing a satisfactory domestic work force for agricultural employment. For example, farmers in Fresno County, Calif., a part of which comprises my district, worked for years on a pilot program with the State of California to develop a domestic work force. It failed miserably. Again, less than a year ago the strawberry growers in southern California actively recruited unemployed domestic workers to harvest a rapidly ripening strawberry crop. The turnout was marginal and the results worse.

Some of the unemployed lasted 2 days on the job, others not even a day. So it failed. Growers of fruits and vegetables throughout this country have tried to meet their needs with domestic workers. They have been unsuccessful, even when wages reach \$20,000 annually. Over time, as the domestic shortfall increased, the dependency on undocumented workers increased to a point where between 65 and 85 percent of the harvesting is done by undocumented workers. So these, too, failed.

Mr. Chairman, in terms of economics there is much at stake in our developing a system of labor protecting both farmers and workers. I should point out that in the 17 Western reclamation States, more than \$3.1 billion of hand-harvested fruits and vegetables were produced in 1980. Unharvested, those crops are valueless to grower and consumer alike.

I need not explain to this committee that once a farmer invests in his crop, there is nothing more important to him as being able to harvest his crop successfully. And I should like to point out, Mr. Chairman, that the irrigated crops that we're talking about which are especially labor-intensive include asparagus, beans, broccoli, cauliflower, celery, corn, cucumbers, kale, melons, onions, and garlic, fresh and processing peas, and others that I've listed in my written statement.

Mr. Chairman, today, even without H.R. 1510 or another program temporarily to admit foreign workers, we have the H-2 program. The law states ". . . [ii] who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country . . ."

A May 1980 report entitled "Nonimmigrant Workers in the U.S.: Current Trends and Future Implication," distributed by the U.S. Department of Labor, noted that the H-2 program was a diminutive version of the so-called bracero program, whereby the workers are bonded to specific employers.

Nothing in H.R. 1510, Mr. Chairman, truly alters this.

Regulations by the Department of Labor created two types of workers and two types of employers. In agriculture—only in agriculture—the Labor Department required that housing, meals and transportation be supplied by farmers. And yet the other categories of H-2 workers and their employers do not have this requirement imposed. This is grossly unfair to farmers. Moreover, it is economically impossible for them to construct housing adequate to meet State and county standards, to be occupied only a few weeks a year by foreign workers. Farmers simply cannot afford to fulfill the requirement.

The H-2 program is therefore useless to farmers, especially farmers in western agriculture.

Today we visit H.R. 1510, the Immigration Reform and Control Act of 1983. Mr. Chairman, you have asked that we look most carefully at the difficult and complex issues this major legislative initiative poses for agriculture. Therefore, the all-important question involves providing an adequately protected work force made up of domestic and foreign individuals.

While I admire the efforts put into the development of H.R. 1510 by the Committee on the Judiciary, I must in final analysis state that in its dealings with agriculture it is shortsighted. Indeed, Simpson-Mazzoli is most shortsighted in respect to labor-intensive crops, which ripen according to the dictates of weather, not by a schedule propounded by bureaucratic regulation or congressional fiat.

This dependence upon weather conditions alone makes agriculture radically different from commercial business or industry, and consequently makes its labor need as different. H.R. 1510 provides no emergency provision to take care of the unique harvest problem that requires ready, willing, and able workers in the fields immediately to save the crop for market.

It continues the concept of foreign workers being bonded to employers. It provides no provision for foreign workers who do not wish to become U.S. citizens, but who do like to return from their native country to work in this country. In short, the alternative offered in H.R. 1510 is the institutional H-2 program that is a product of eastern agriculture. Its application to western agriculture has limited potential. I urge you to consider seriously the establishment of a two-track system. It has an appeal that protects this Nation's ability to meet the demands for food and fiber, a demand that is worldwide.

Therefore, Mr. Chairman, on Thursday, June 9, I introduced H.R. 3270, a bill entitled "The Seasonal Agricultural Foreign Worker Program Act of 1983." It is a result of my own thinking and consultation with a wide variety of farmers in my district over the last 3 years. I submit H.R. 3270 to you and your committee, Mr. Chairman, and I hope that you will find it useful in your deliberations on this most complex issue.

In my opinion, the seasonal agricultural foreign worker program provides options not now available in H.R. 1510, and provides them for the foreign laborer as well as the farmer.

Mr. Chairman, let me emphasize that the worker's ability to be mobile in working for an employer of his choice completely differentiates H.R. 3270 from the H-2 program. Under the H-2 program, a worker was under explicit contract with one certain employer, a situation that could give the employer virtual economic life or death power over the worker. So there has been exploitation. But once again, under H.R. 3270, no such contract exists by law, and the worker is free to quit his employer for any reason at all, and in exercising this economic freedom, he shall not be thrust out of the country.

As developed, the legislation requires agricultural interests to obtain certification to hire nonimmigrant foreign workers from the Attorney General in cooperation with the Secretaries of Agriculture and Labor. And, Mr. Chairman, let me emphasize that the putting into the process of the Secretary of Agriculture is very important to the entire agricultural community.

This meets the growers' needs by allowing sufficient numbers of foreign workers into this country to perform necessary agricultural chores, but only if there is an insufficient domestic work force available.

Mr. Chairman, I shall not cover, except pursuant to your questions or members of your committee, some of the other details of the bill. What I've just described is the essence of the bill.

Let me conclude, Mr. Chairman, by saying that we hardly have our fingers on the pulse of the issue. In my view, the social engineering of providing food and fiber for this Nation and the world should be done most carefully when it comes to the basic needs of people. I should hope that if we are to err, we err in favor of the ability of our farmers to provide a plenitude of food and fiber.

Mr. Chairman, I know some will question: why do we need something other than H-2? On the east coast, H-2 has in an evolutionary process over the past 40 years become a practical and necessary tool, and I do support modernization of the H-2 program.

But in the West we have come to depend on the market place. Foreign workers did not pay too much attention to the mandates of the United States Congress. They came anyway, risking apprehension for a way of life that was alluring and economically rewarding. That these people are abused is as much a subject for us today as any, and the record has not been very satisfactory on either side of the issue.

The word "coyote" has taken on a new meaning along the Border States, as does the charge of servitude for those who do find employment.

The Seasonal Agricultural Foreign Worker Act of 1983 gets away from these problems. Farmers have relied on a leaky border, and so have many of their workers. So there is much natural dependence involved. Let us build on it, not tear it down.

Mr. Chairman, that concludes my opening remarks, and I should be glad to answer your questions or the questions from your colleagues.

The CHAIRMAN. We thank our colleague, and as I stated before, your full statement will appear in the record.

[The prepared statement of Mr. Pashayan appears at the conclusion of the hearing.]

The CHAIRMAN. Are there any questions of our colleague?

Mr. CHAPPIE. Mr. Chairman.

The CHAIRMAN. Mr. Chappie.

Mr. CHAPPIE. Mr. Pashayan, could your legislation be classed or considered as another bracero program?

Mr. PASHAYAN. Your question is could this be considered as another bracero program?

Mr. CHAPPIE. Yes, sir.

Mr. PASHAYAN. Mr. Chappie, H.R. 3270 is not another bracero program, and I have prepared, Mr. Chairman, just as a matter of convenience, translated H.R. 3270 into amendments for H.R. 1510, and I shall offer them for the record here. H.R. 3270 is not anywhere close to a bracero program at all. The essential evil in the bracero program, if you will, was that each worker, each foreign worker, was bonded to a particular employer.

And that gave the employer, Mr. Chairman, an unfair leverage over that foreign worker, because if for any reason the employer thought appropriate, he could fire the employee, the employee would therefore lose the right to remain in the United States.

So it may well have been true, for example, that some employers may have been paying on paper minimum wage, but they may have extracted of the employee several more hours a day of labor for nothing, under the threat of firing them and they would have to leave the country.

Mr. Chairman, H.R. 3270 does not have that provision that the bracero program had. Under H.R. 3270, Mr. Chairman and Mr. Chappie, a worker can quit any employer he wants to and go to work for another employer, and he will not be threatened by law to be removed from the country, and I think that is the fundamental distinction, and it eliminates that problem that existed under the bracero program.

So this in no way is a revisiting or a restructuring, a reconstitution of the bracero program. In no way is it.

Mr. HOPKINS. Mr. Chairman.

The CHAIRMAN. The gentleman from Kentucky.

Mr. HOPKINS. Mr. Chairman, let me thank our colleague, Congressman Pashayan, for a very well-thought-out statement. I would like to ask him, because of his knowledge on the subject, if he has given any thought to what additional problems might be forthcoming involving Central America. In the event that Central America falls and millions of people begin to walk north with El Salvador suddenly transferring its problems to El Paso—what additional problems could this possibly cause?

Mr. PASHAYAN. Economically, the United States is still a magnet that shall draw people from other countries in the world who seek to improve their economic condition of life. I frankly don't think anything the Congress can do can wholly—it's impossible, really, to build an impenetrable wall. As much as we can do is try to regulate and to impose some kind of control, which I think H.R. 3270 does, for farmers.

It's my object, and I hope yours, to protect the interests of the farmers and of the farm laborer, who as I said today exists under terrible conditions. Yes, I agree that, and there are statistics that indicate, at least, that there will be some northward migration of peoples who are now living in El Salvador and the Central American region.

And I therefore think it all the more necessary that Congress attempt as best as is humanly possible to allow this country to gain some kind of control over the situation, but in a manner that is also fair to the worker, because after all they're people just like we are.

They come now under a cloak of darkness, in all sorts of contorted ways, and it's inhumane, the system that now exists. Farmers recognize this, and they're forced to hire these people because of the economics involved. X

I think we owe a duty to these people, as well as to the farmers, to try to put something into the law that would protect both interests.

Mr. HOPKINS. I thank my colleague. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any further questions for our colleague?

[No response.]

The CHAIRMAN. If not, we thank you very much for your appearance and your contribution.

Mr. PASHAYAN. Thank you very much.

The CHAIRMAN. We're going to handle the next series of witnesses by panels. We hope that you split among you the allowable time. We hope that each witness could take 5 minutes, not that you have to limit yourself exactly to the 5-minute period. But if we could allocate that time, it would be helpful for us to proceed during the day and, hopefully, finish our deliberations today.

We have our distinguished colleague from Washington, Congressman Sid Morrison, who will be accompanied by Jim Matson, Richard Martin, and Christian Schlect. We'll be very happy to hear from you and your panel at this time, Mr. Morrison. And, if you don't mind, I'll recognize you in the order in which you appear on the list, or we will abide by your wishes as to what order you would like.

Mr. Morrison.

STATEMENT OF HON. SID MORRISON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. MORRISON. Thank you, Mr. Chairman, and thanks to the members of the committee.

Mr. Chairman, I'd like to thank you particularly for requesting the sequential referral of the legislation before us today, and in holding this hearing. Some of us have asked for that. I know it's more important in some parts of the country than others.

This panel represents the Northwest and some specialty crops and harvests for which labor is vitally important, so we appreciate this chance to appear before you. No question in my mind, Mr. Chairman, that agriculture has special needs which will not be sat-

isified with the current version of the Immigration and Reform Act as it is before us now.

The Judiciary Committee has made several improvements over last year's bill, but it still is not workable in our part of the United States. I represent a district that's different than any of you who also serve on this committee. My area has about 1 million-plus irrigated acres growing about 70 different crops, and many of these are diversified, and through the years have remained very labor intensive.

A lot of farm procedures through the years have been mechanized, but most fruit and a number of vegetable harvests depend upon human hands and minds to determine both maturity and to protect quality, in other words, handpicked. And, the world consumers have become used to this sort of quality, this sort of protection, and it's a very essential part of these products.

You add, of course, to this labor intensity the dimension of highly perishable products with short, weather-dependent harvests, blend in a special competitive worldwide market, and you have a most difficult situation, a situation that is made more difficult by the consideration of the legislation in front of us.

Right now, as we're in this hearing, a harvest is going on which perhaps illustrates the difficulties that are embodied in the H-2 program, which currently is being used in some parts of the country to supply short-term or temporary agricultural help.

The sweet cherry harvest is on and Washington State ranks No. 1 in that particular product. You don't know from day to day whether you are really going to need the crew or perhaps hundreds of workers. For instance, the House and Senate versions of the Immigration Policy Act differ in how many days they require beforehand for certification of H-2 workers. One of them requires 50 days, the other requires 80.

The cherry harvest begins 60 days after full bloom, and you have absolutely no idea when you actually are going to be able to start, so it does not fit the regulatory maze. And, for instance, if you requested several hundred H-2 workers under the very rigid requirements of that program for a certain date and then could not use them, what sort of a dilemma faces the grower, as well as most certainly the worker, under those circumstances?

Perhaps one of the unusual or unique characteristics of Northwest agriculture is that the farms are relatively small, smaller than they are in California, and I would insist that's because we have had a migratory stream, a migrant stream, through the years. We look back in history and find that before the workers came from the South, our good neighbors the Oklahomans and the folks from Arkansas were legendary in our area. They used to come up into our area, work through the summer and go home. Now they own most of the farms in the Northwest, a real tribute to them.

So we've always relied on this stream of migrant workers. I insist that the large average size of farms, particularly tree fruit operations, on the east coast is a result of the H-2 program, and in fact we have used Government policy to force farms to get larger and larger on the east coast where they find the H-2 program satisfactory.

Of course, within our area, since we're far removed from the normal migrant work stream, agricultural wages in the Northwest are among the highest in the Nation. In fact, for most years they do rank above other States of the Union, and we have the highest wages in the world.

Again, the average fruitgrower in the State of Washington probably has fewer than 50 total acres. Workers in our area are well compensated. Most are satisfied, and they return to the same farms year after year. Local workers normally dominate the full-time or nearly year-round jobs of packing, processing, packaging, or transporting these various commodities.

In other words, without temporary harvest help the basis for year-round labor and worker's jobs is lost. In recent years, Hispanic workers have increasingly filled the need, our need, for short-term specialty harvests. These workers live in the local area or come from the Southwest, attracted by piece rates that reward aggressive work habits.

There's no argument that since the termination of the bracero program, this migrant stream has been joined by an unknown percentage of undocumented workers. This pattern has evolved unintentionally and for a long period of time. Washington State law, which I understand is paralleled in 30 other States, prohibits employers from making discriminatory inquiries into a worker's nationality or eligibility to work.

All of these workers have social security cards, and that's about all we can ask from them under the current laws within our State. I think the H-2 program has been effective. It certainly has been used in certain areas of the country that need a certain number of workers for a definite period of time.

Our story today will be that there's a tremendous amount of variation in the need. Of course, as I said before, we can't require the farmer to keep hundreds of workers on the payroll when the harvest has been unpredictable and he has not been able to proceed to put them to work.

Some of the changes which are built into the bill help, and I will not comment on them because of the press of time. They are part of my statement. I will be offering an additional amendment which recognizes the fact that the same workers come back not only year after year, but several times in each year because of the variation in harvests, and I don't think the employer should be required to duplicate that paperwork checking out the legality of those workers each time in case employer sanctions are maintained in the bill.

We also will try to make the point that we need flexibility on housing. H-2 requires housing that meets certain standards. My home in the Northwest does not qualify under the H-2 requirements, and because of the small size of the farm and the very short specialty harvests in which we're involved, farmers just cannot afford to construct the kind of housing that's mandated under the H-2 program. This doesn't work in our part of the country.

County commissioners have communicated with me and say just the complexity of their changing the zoning laws to allow for farm worker housing could perhaps consume years, and to force this program on them overnight will not work.

We're supporting the phase-in that we have to have sanctions, the phase-in over several years. These are embodied in both bills. However, the House bill requires that you have to meet H-2 requirements, and that just cannot be done in a short period of time.

Mr. Chairman, in closing, before I introduce the rest of the panel, I'll just say that there's no question in my mind that new immigration policy is necessary. I've attended hours of meetings with both the Hispanic community and the growers that I represent, and both groups feel the bill before us does not provide enforceable or fair answers.

And we will have some specific suggestions on changes that could be made. I believe that, as Congressman Pashayan has testified, some form of a dual-track program, adding something in addition to the existing H-2 program, is absolutely necessary, H-2 being very fixed and rigid, and, for the sake of agricultural workers as well as employers, we need some sort of a flexible program that provides the mobility to move from farm to farm and from crop to crop within our Northwest area.

Mr. Chairman, I thank you for this opportunity. I would like to ask that we shake up the order just a little bit, and that Dick Martin, from Sunnyside, Wash., who's with the Washington State Asparagus Growers, provide his testimony at this time.

[The prepared statement of Mr. Morrison appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, and, Mr. Martin, we'd be happy to hear from you at this time.

**STATEMENT OF RICHARD L. MARTIN, ASSISTANT MANAGER,
WASHINGTON ASPARAGUS GROWERS ASSOCIATION**

Mr. MARTIN. Thank you, Mr. Chairman.

The Washington Asparagus Growers Association appreciates this opportunity. I will be speaking about asparagus particularly, because that is the area that I am so well acquainted with, but those facts would also apply to most of the row crops that are grown in our particular area.

Members of our association live and farm in south central Washington State and north central Oregon. The association was formed in 1957, and has represented 85 to 90 percent of the asparagus growers in our regions since that time.

I might add that we do not process or handle asparagus as an association. We represent the growers in establishing terms and conditions for the sale of their crop. The average acreage per farmer has grown from about 20 acres in 1957 to a current 42 acres per farmer.

Our area has 33,000 acres of asparagus, making it the largest growing area in the world for that commodity. We have increased acreage by 50 percent and added 4,000 workers to the payroll since 1980.

We sincerely hope that the effects of this legislation will not cause a reversal in our planted acreage. Asparagus is a labor-intensive crop. The consequences of this legislation will, without a doubt, either positively or negatively affect our industry.

This year, area growers have employed approximately 11,000 persons in the harvest. Each acre is harvested for about 60 days, requiring about 4 million man-hours. Another 1½ million man-hours are required to pack and process that asparagus.

Approximately 90 percent of those workers are Hispanic, and about one-third are females. We estimate that one-third of the workers are local, and two-thirds are migrant. It is impossible to know how many might be illegal. Most of the local workers have lived in the area for years. Many have wives, husbands, children, and homes.

Of those who are undocumented, we can offer no guess as to how many will be able to establish residency. I do believe that because of their long-time fear of INS, a lot of effort will be required to get them to come forward to apply for legal status.

The structure for this is in the proposed legislation, and if properly instituted, should help. Growers are particularly concerned about the loss of a dependable, stable, trained labor supply. At this time, we do not have any idea how many workers will return next year, and if they do, how many will have the proper documentation.

Further, we do not know how many will choose to remain in agriculture once they do become residents. In the Pacific Northwest, growers have never used the H-2 worker program. Until experience dictates otherwise, we are concerned that there are many facets of the H-2 program which will not work in our area.

We hope that if this legislation does pass, that Congress will remain concerned and ready to consider options to the temporary farmworker program. If it does not, then we may well see labor-intensive agricultural commodities go the way of the steel industry.

Del Monte Corp., a subsidiary of R. J. Reynolds Industries, recently signed an agreement with the People's Republic of China that outlines the possibilities of a joint food production and marketing agreement. As part of that agreement, Del Monte and Chinese technicians this spring planted an experimental farm near Shanghai with the Del Monte Co.'s high yield varieties of tomatoes, asparagus, peas, and corn.

Should the harvest prove fruitful, further discussions will be held concerning processing facilities. Del Monte Corp. packs approximately 8 million cans of asparagus in Washington State. The loss of that facility where unemployment is already high, primarily due to the loss of the sugar beet industry in the Northwest, to an area where cheap labor is readily available, would be tragic.

We believe that the consequences of this legislation are monumental. Certainly, our immigration laws need revision. We can only hope that the effects are not so far-reaching as to destroy this country's vital agricultural industry.

This concludes my testimony, and I will be available for questions when appropriate. Thank you, very much.

[The prepared statement of Mr. Martin appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, very much, sir.

Mr. MORRISON. Mr. Chairman, I would like to ask former State Senator Jim Matson, representing the Pacific Northwest Growers, to speak next.

The CHAIRMAN. Senator, we will hear from you at this time.

**STATEMENT OF JAMES MATSON, PRESIDENT, MATSON FRUIT CO.,
ON BEHALF OF PACIFIC NORTHWEST GROWERS**

Mr. MATSON. Thank you, Mr. Chairman. I think perhaps for my remarks, and you have our testimony which has been entered, maybe a brief picture of the tree fruit industry in Washington State would be in order.

We grow substantial quantities of sweet cherries, apricots, peaches, plums, prunes, pears, and apples. Apples are by far the lead crop in Washington. It is in excess of 40 million bushels for the fresh market, and that is due to increase dramatically in the near future.

Because there is no mechanical means for the harvesting of fresh apples, a labor force of 35,000 people are needed for a short period in September and October. Domestic workers make up perhaps 25 percent of that work force.

The vast majority of Americans do not want these jobs for a variety of reasons. The seasonal nature, it is physical work, the status of the job, and right or wrong our social welfare programs over the years do not encourage us to work at jobs that we do not like.

Therefore large numbers of noncitizen workers are needed, if we are to avoid massive crop losses. The problem as I see it is that neither the Senate nor the House version of the immigration reform bill meets the needs of Northwest growers.

The average size apple grower in our State has about 25 acres. They are small businessmen who do not retain lawyers, do not use an accountant except for once a year to make out their income tax, and they do not have secretaries. And in most cases, their office is in their home.

A typical grower keeps his books and makes out his payroll on the kitchen table after supper in the evening. The problems and the cost of certification, recruitment, recordkeeping, transportation, housing, food services, work guarantees, and sanctions will simply overwhelm these people, and in many cases destroy their life's work.

We certainly agree that control of our borders is necessary. But there must be the skills and understanding among us to develop legislation to avoid the financial ruin of hundreds of small businessmen who are growing fruit for a living.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Mr. CHAPPIE. Mr. Chairman.

The CHAIRMAN. Mr. Chappie.

Mr. CHAPPIE. Is a question in order?

The CHAIRMAN. Not until we hear from the whole panel. Then we will return for questions.

Mr. Schlect.

**STATEMENT OF CHRISTIAN E. SCHLECT, PRESIDENT,
NORTHWEST HORTICULTURAL COUNCIL**

Mr. SCHLECT. Thank you, Mr. Chairman. Again, the statement has been entered into the record. Mr. Matson has described our in-

dustry, and I will not go into the details. I would like to briefly highlight a couple of points that we have tried to make in our testimony both oral and written.

We would assert to this committee that the employer sanction provisions in the immigration bill are too harsh, that the civil penalties of an absolute amount of either \$1,000 or \$2,000 per illegal alien knowingly hired can wreak special havoc on small orchardists, for example, who might only use a labor supply for 2 days to 2 weeks during the course of the year, and might well, given our historical situation and dependence on foreign labor, have to use these people in order to harvest the crop.

We do not condone violations of the law. But if this bill is passed by the Congress, we feel that there ought to be flexibility in the court system and judicial system to levy an appropriate fine, and not have a fixed fine that is the same for IBM Corp. as well as for Matson Orchards, or any other small grower in the Northwest.

The second point is just a matter of concern which we hope is worked out between this committee and perhaps the Judiciary Committee on the floor, and that is the question on amnesty. There is concern that once the people who are now in the United States, that when they do choose to apply for amnesty, we want to make it clear on the record at least of these deliberations that that person upon application for amnesty is eligible to work, and is not in some way put in legal limbo between the time of application and the time of actual certification or verification that he is eligible to remain in the country.

We imagine that there will be quite a paperwork blizzard if all these millions of people do apply for amnesty. And we do not want the employer in the position of not knowing whether he is legal to continue hiring this now known to be illegal alien.

The staff people have assured us that that is their intent, but we would like to see that clarified.

The final item would be that we are concerned about the H-2 program's applicability in the Northwest. We do support the provisions that were put in by Mr. Mazzoli's committee that do aid the agricultural people that do use the H-2 program.

We specifically support the provisions on housing allowances in lieu of housing in some cases that is in-house. On the transition program, the transition program we view as perhaps applicable in some parts of the Northwest, but not overall. And in those cases where it is, it is a transition to the H-2 program.

And in that particular program, we prefer the Senate version. Later on in the testimony today, there will be national agricultural groups that will probably go into that in more detail, and we support their testimony.

Last, we do support the testimony of Congressman Morrison, Congressman Pashayan, and others who said that a western approach is needed. And I think that one will be developed for your consideration in the near future that will provide the flexibility to the people, both the employees, who are currently undocumented, and subject to some abuse, especially at the border crossings, and protection to the employer to get his crops off with the least amount of Government intervention.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Matson and Mr. Schlect appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, very much.

Now we will go to questions of the panel.

Mr. Madigan.

Mr. MADIGAN. Mr. Martin, do you know the average wage paid asparagus harvesters in your area?

Mr. MARTIN. Yes. The average is established by the Employment Security Department for employer interstate clearance orders for the three companies—Del Monte, Green Giant, and Rogers—that bring workers in for the asparagus harvest. This year it was \$5.50 an hour, which includes their housing.

I know of one specific family, and this is documented, and has been in the valley, of six members of a family who this year earned in excess of \$21,000 in the asparagus harvest.

Mr. MADIGAN. How long did that take?

Mr. MARTIN. The harvest this year went from about April 6 until June 8.

Mr. MADIGAN. Will the local people, the people in your area who are unemployed, do they come out to help in the harvest, and will they in the future?

Mr. MARTIN. We have many locals and families in our valley that work in asparagus. But those who are on unemployment, we have many unfilled job orders. I am chairman of the job service employer committee in our valley. And we work very hard to try to find employment for a large segment of unemployed due to the closure of Hanford, and the activities there in those portions of Hanford.

We have been very unsuccessful in getting any of the orders filled with workers in local job service centers.

Mr. MADIGAN. Mr. Morrison, you said that your home would not qualify under this bill.

What is the matter with your home?

Mr. MORRISON. I think that the windows are at the wrong height. In other words, the requirements under H-2 are rather specific as to the height of windows, and this sort of thing. In fact, it is very difficult to find a home that any of us as Members of Congress or the general public would live in which would meet those very specific requirements.

That is part of the difficulty of making a rather rapid phase-in to that sort of requirement. You are asking a number of smaller operators and small farmers, as described by Jim Matson, to immediately come forth with some housing that has very specific needs.

Mr. MADIGAN. But your plumbing works all right?

Mr. MORRISON. The last time that I called home, yes.

Mr. MADIGAN. Mr. Matson, do you believe that those who apply for legalization under the act will be able to supply you with an adequate work force?

Mr. MATSON. I assume that you are talking about the amnesty people. No; I really do not. First of all, there is really only a small portion of illegal aliens or undocumented workers in this country who are in agriculture now. Perhaps only a third or less.

Second, since agriculture is quite seasonal, it seems to me that if those people if they become legal will find jobs in other areas that

are steady year-round jobs, and will provide them with a better living.

The people that the industry has been using work in agriculture during the seasonal part of the year, and then they go back in most cases to Mexico or South America, and live rather cheaply during the winter months. Once they become legal, it seems to me that they will go into more steady lines of work.

Mr. MADIGAN. Mr. Chairman, I have one more question for Mr. Martin.

Mr. Martin, if this bill becomes law, do you have specific suggestions that you would make to the Government as to how they can assist employers in trying to implement the law?

Mr. MARTIN. Yes. I think that it is going to be imperative that a clear concise booklet that is very definitive be available to growers or to any employer for that matter. Because all employers in the United States are going to be required to maintain the records, or be subject to the impact of this law, although many may not be concerned about it initially.

The Migrant Seasonal Farm Workers Protection Act, the regulations for that law were never well printed. There were many, many violations of the old law, and probably will be of the new one, because of the lack of understanding of the law.

And I think that that suggestion is in my estimation an imperative. That we have a booklet that defines those procedures that must be followed. And if they are followed according to that booklet, that that would preclude violations being cited to employers.

Mr. MADIGAN. Thank you, gentlemen.

And thank you, Mr. Chairman.

The CHAIRMAN. Mr. Huckaby.

Mr. HUCKABY. Thank you, Mr. Chairman.

Mr. MORRISON, do you have any estimates of how many migrant workers go into the State of Washington each year?

Mr. MORRISON. I do not have that. And I think perhaps, Congressman Huckaby, that that question could best be answered by some of the Labor Department officials who will appear on later panels.

One of our difficulties, as I indicated, in the State of Washington is that we cannot ask the questions that really give us the statistical base to know how many people actually come from other areas. Occasionally, you go out and look at license plates in the field as sort of a rough estimate.

But I think that we have heard on both sides of me testimony indicating that 25 percent to a third of the workers seem to be local and living in the area, and the others coming from the outside areas, probably mostly from the Southwest.

Now admittedly, built into that flow are unknown numbers of undocumented workers.

Mr. HUCKABY. Do you have any idea of the magnitude, if you assume that one-third are local and two-thirds are coming from outside of the region, are we talking 5,000 or 30,000?

Mr. MORRISON. I am sure that we are probably talking 25,000 to 30,000 in the case of the apple harvest. There are so many harvests going on concurrently, that it is a little difficult to tell. But per-

haps we could get some better figures for you. I would be delighted to pursue that.

Mr. HUCKABY. How many seasonal workers does the average farmer employ?

Mr. MORRISON. Again, that varies. If you are picking cherries, it takes a lot of workers. As an average, 100 pounds an hour. And if you are picking apples, you will average hundreds of boxes a day, bushel-type boxes.

If the average size farm is, as we have testified, in the 25 to 50 range, I am guessing that the peak of 1-week or 10-day apple harvest, that farmer would probably have 20 workers or so in the field at any one time.

Many of those cases with the smaller employer, they will have the same workers back year after year after year. I know in our case we have had the same folks back for 20 years. And you know them, they are just like members of the family. You still might not know exactly where they came from.

Mr. HUCKABY. One final question, Mr. Chairman.

Sid, you mentioned twice the fact that the H-2 housing requirements are virtually impossible to meet.

Could you tell us specifically what is the difficulty in meeting the housing requirements of H-2?

Mr. MORRISON. I think that the housing requirements create a special difficulty in the Northwest for a couple of reasons. No. 1, the harvesting season is so short, that the capital requirements for a farmer to build that housing to meet the specifics of the program are just more than he can borrow. He just cannot get the financing to do it. He cannot justify it.

And the fact that those farmers are small also complicates that situation. They just do not have the capital. That is why I sort of made an allegation that the reason that the average size apple orchard on the east coast is now up to 600 acres is that they have gotten their workers through the H-2 program, and only the big ones have survived.

In our case, we have in the last 30 or 40 years, and we have had the flexibility that this committee has often addressed, of preserving that smaller family farm operation. And you just cannot do it, and make room on your farm, and come up with the dollars to finance housing that may only be used for a week or so out of the year. It is not in the financial cards.

Mr. HUCKABY. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any further questions of the panel?

Mr. OLIN. Mr. Chairman.

The CHAIRMAN. Mr. Olin.

Mr. OLIN. I want to be sure that I understood the comment made about the dual track system. I guess that Mr. Morrison brought that up first. I take it that in the Northwest, you do not use H-2 workers really at all presently. And under the new law, you still would not use them. I take it that you are really saying that you do not mind if the country keeps H-2, but you do not need it, and you need some alternate.

Is that what you are really saying?

Mr. MORRISON. Yes, I think that by dual track, Congressman Olin, we are referring to the efforts of Congressman Pashayan and

others who have taken a look at H-2, and said it does not work. It does not work for the workers, nor does it work for particularly the western agricultural employer or the crops that are grown there.

In addition to the H-2 program that can be used in some parts of the country, and I mentioned the east coast, a temporary worker program of some type, and we have several versions of that on paper that I trust that the chairman will allow us a chance to present in an amendment form later on.

Mr. OLIN. Do you expect that we will be seeing amendments that will describe the alternate approach?

Mr. MORRISON. Yes. In fact, I think that Congressman Pashayan passed out after his testimony this morning one approach that he has introduced. I believe that Congressman Panetta and others will be working to present an additional version, so that the committee will have some choices to consider when looking at what could satisfy the needs of these very specialized harvests.

Mr. OLIN. Thank you, very much.

The CHAIRMAN. Mr. Chappie.

Mr. CHAPPIE. Mr. Matson, are you a grower?

Mr. MATSON. Yes, I am.

Mr. CHAPPIE. Could you tell us about the size of your farm and what you grow?

Mr. MATSON. Well, we grow essentially red delicious apples. We have a few golden delicious, and a few winter pears. But we are about 95 percent red delicious. In acreage, we operate about 350 acres of which about 200 is in production.

Mr. CHAPPIE. So your work force at harvest is in excess of 100 people?

Mr. MATSON. Yes, we generally figure about 120.

Mr. CHAPPIE. Currently, I would suspect that because you do not have H-2, you are not overly concerned about housing difficulties. But let us assume that that was the only alternative that you had.

Do you have any idea of the amount of floor space and financing you would require? Would you be able to shoulder that added burden?

Mr. MATSON. I guess that the only way that I can answer you is obviously we have done some work on what it would cost to build the housing, and the cooking facilities, and the dining rooms, and the sewage facilities, and to provide the potable water for these structures.

I keep coming up with \$600,000, which is an added expense, capital expense, that obviously is going to come out of profits, if there are any. I cannot project whether or not if we spend that kind of money, plus the cost of operating the camp every year, there is no way that I can project whether that is a reasonable investment or not, because I do not know what the price of fresh apples is going to be each year for the next 10 years.

I can tell you that if I did it this year under the present market, that we would be scratching to pay our other bills. And the bad part about that, and I will finish with this, is that yes, I probably will build the housing, because I cannot take the risk of not having a harvest labor force.

But the one who is not going to be able to do it is the 25-acre grower, which is the real salt of the industry. He is the one who is

going to go under. The larger successful growers will somehow survive.

Mr. CHAPPIE. Thank you. I would like to further associate myself with your remarks, Sid, in that I essentially had the same problem with my five kids, in that we did provide worker housing on our ranch. And the continual question was how come those folks that are here for 30 or 40 days have better facilities than we do, pop. And that reality is pretty difficult to relate to youngsters.

And I am truly concerned of the impact that this is going to have on the mom and pop orchardists out on the west coast.

Thank you.

Mr. MATSON. Congressman Chappie, if it is all right, Dick Martin has more specific figures, because the asparagus growers have looked into individual housing units in answer to your question.

Mr. MARTIN. We just completed in the city of Sunnyside, the housing authority of the city of Sunnyside, 24 farmworker housing units in the city. And those cost \$52,000 per unit. Those are family units, not the dormitory style home.

So that might give an idea of the cost involved in putting in the housing.

Mr. CHAPPIE. To that point then, one, it is a very perishable commodity; and two, there are no price supports for it. If you are competitive, it is going to be difficult to tack that onto the added cost of a bunch of asparagus, right?

Mr. MARTIN. We do not have that ability, that is correct.

Mr. CHAPPIE. Thank you, Mr. Chairman.

The CHAIRMAN. Are there any further questions of the panel?

Mr. VOLKMER. Where do the present workers stay, the present asparagus workers?

Mr. MARTIN. Presently, there are many farms that have some housing units on their farm. These are housing units that have been in existence for many years that have been upgraded, most of which have a waiver from the OSHA requirements, so that they can be inhabited.

However, when the OSHA requirements became so extensive, many, many growers took out their housing. And for a number of years, the Yakima River became and still is in many instances the home of a lot of workers that come to the valley.

We are fortunate, however, to have many small cities of 1,500 to 9,000 population spread 10 miles apart all throughout the valley. There are a lot of units available in the city that people rent.

I might add that in the two versions of the proposed legislation, one of those provides for a housing allowance. And if we must have legislation that includes this, it would seem essential in our area to have the provision for housing allowances opposed to on-site housing. Because we have a significant number of units available in the towns that are not located at the farm sites, but are within 10 or 15 miles of those sites.

Mr. VOLKMER. You are saying that you represent the asparagus growers, but are there other crops in the Yakima Valley so that an employee coming there temporarily to work could work through a period of a year?

Mr. MORRISON. We attempted to set up the panels, so that they would start working for Dick Martin in the asparagus cut usually

late in March, and would end up in the upper reaches of the State of Washington near the Canadian border in the apple harvest around October 20.

So there is an extended period of time. But the moral of our story here from this panel is during that time, you may work for 20 or 30 different employers, many of them small in nature, but you go from one to the other.

Our experience is that you have to be a little careful if the warehouse says we cannot pack your fruit for 3 days, because the chances are fairly good that you are going to lose your crew. Because they keep moving, and particularly the professionals who make very, very good money.

The other thing that has happened on housing is that our Hispanic brothers do so well, that we find in the Yakima Valley—many of them come to our congressional offices, and we handle many of their problems—that they come from certain communities in Mexico. And they have a great tendency and ability to find a relative in one of these small towns which Mr. Martin has mentioned, and they will live within those communities on a temporary basis while they are working there.

They do not seem to have the needs for additional housing that others might have. That is why a special housing allowance would certainly be usable, I think, in our area.

Mr. VOLKMER. Do you think that you could provide the housing for the migrant workers without requiring the employers to provide the housing?

Mr. MORRISON. We feel that that would be essential, particularly for the smaller operations that we basically are representing today.

The CHAIRMAN. Are there any further questions?

[No response.]

The CHAIRMAN. If not, we thank you, Mr. Morrison, and I thank the members of your panel.

Mr. MORRISON. Thank you, Mr. Chairman.

The CHAIRMAN. The next series of witnesses are the professional and technical witnesses. We have Mr. Riso, Deputy Commissioner from the Immigration and Naturalization Service. He will be accompanied by Mr. Salgado and Mr. Carmichael. And Mr. Barnes, General Counsel, U.S. Department of Agriculture. He will be accompanied by Ms. Wilcher.

And we have Ms. Marion Houstoun, Immigration Staff Specialist, Bureau of International Labor Affairs, U.S. Department of Labor. And she is accompanied by Mr. Hancock.

I read more names than there are at the counsel table. Maybe there are some who are accompanying you in the rear.

Mr. BARNES. Yes, Mr. Chairman. I think that if it is satisfactory with you, that some people accompanying us who might provide information will just remain seated behind us rather than sitting at the witness table.

The CHAIRMAN. That is perfectly agreeable. All you are welcome. As we did with the previous panel, we will accept your appearances as you work it out among yourselves, not necessarily going in the order that you appear here.

Mr. RISO. Why do I not go first, sir?

The CHAIRMAN. All right, Mr. Riso.

Mr. Riso. Thank you.

The CHAIRMAN. As I said, prepared statements will all appear in the record in their entirety.

STATEMENT OF GERALD R. RISO, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY ANDREW CARMICHAEL, ASSOCIATE COMMISSIONER FOR EXAMINATIONS, AND RICHARD NORTON, DEPUTY ASSISTANT COMMISSIONER FOR INVESTIGATIONS, IMMIGRATION AND NATURALIZATION SERVICE

Mr. Riso. I would like to summarize the contents of our prepared statement. It is no secret that our borders are under substantial pressure, and that we need to be in a much stronger position to deal with these pressures.

I think that it is important to note, however, that a significant part of immigration into the United States is taking place under conditions and circumstances which Congress has not set, no executive branch has set, no member of the administration has set, and no duly elected public official at any level of government has set.

Conditions are set by persons who decide when, where, and how to enter this country, and where they will go. And we believe that we need to place the immigration process ~~back under some semblance of control, and be governed by a rule of law.~~

We propose doing that through employer sanctions, a legalization program, and at the same time meet the special needs of the employers for a foreign labor force. The keystone in placing immigration under control is reducing the pull of employment opportunities through the use of employer sanctions.

The process as envisioned places several responsibilities on the employer and the persons seeking employment. All it requires of the employer is to examine documents identifying the individual, and showing that the person is in fact eligible to work. The employer is expected to do so in good faith. He is expected to keep a single form, a very simple form, showing that this verification has taken place.

The person appearing for employment is simply required to have a document showing eligibility for employment, that he is a citizen, or that he is an alien with permission to work, and complete his portion of the simple verification form.

The kinds of documents that we are talking about are fairly common and readily available. We are talking about such things as social security cards, driver's licenses, birth certificates, passports, and other.

A point was made before about what to do with the person participating in the legalization program, but who has not yet been certified. Our current planning does envision the use of the receipt for the legalization application during that period of time that the person is awaiting to hear the results of his application.

It is our intention to make the transaction quick, easy, and not require excessive paperwork. Our expectations of the employer are simply a good faith examination of the presented documents. The employer is not expected to be an expert in divining whether a document is fraudulent or counterfeit.

We stand ready as an agency to do two things. We will assist the employer who has a question about a document. We will assist the individual whose documentation has been rejected by an employer but which is valid.

The verification procedure requirement called for in H.R. 1510 as reported by the Judiciary Committee, we consider unenforceable. It exempts all employers until they are given official notice by the Attorney General that there is an illegal alien in their employ.

If we are serious about this, the resource requirements of this particular provision are totally unrealistic from our point of view. If we took every investigator, every border patrolman, and spent all of our time on checking employers, it would take at least 15 years, 15 years, to cover every place of employment in the United States to determine whether the employer fell under the jurisdiction of this particular law as the Judiciary Committee proposes.

Under those kinds of conditions, voluntary compliance with the verification procedure, we believe, would be negligible. And voluntary compliance with this particular requirement, we believe is essential if employer sanctions are to work.

Second, it would permit, during this period of time, a number of employers to persist in discriminatory and exploitive practices that they practice today. Therefore, it is our judgment that the Judiciary Committee in discarding required verification flaws fatally the employer sanction provisions.

We prefer the eligibility verification procedure which was introduced in H.R. 1510 back in February. It is uniformly applicable to all persons at the same time.

Third, there is an emphasis on reducing paperwork. And if there is genuine concern about the amount of paperwork and the bureaucratic redtape, there was a proposal to exempt employers with three or fewer employees.

The net effect of that is to reduce by 50 percent the number of employers who fall under this category, but it reaches about 95 percent of the employees.

Another area of concern for us is the warrant for entry requirement for a warrant for entry onto open fields. We believe this to be an almost impossible obstacle for effective law enforcement of specifically the immigration law.

More importantly, it makes control of illegal immigration for us almost impossible. And it makes the bill much less effective. We also could conjecture as to the practical consequences of extending this kind of prohibition to other law enforcement activities of other agencies.

And we simply note that there were no congressional hearings on this subject to date. This is a major change in law enforcement policy without such hearings.

The third area of concern to us is the hope that the administrative and judicial review requirements of the employer sanctions would be substantially simplified allowing administrative and judicial review of the civil penalties, and then requiring the Government to institute an affirmative suit to collect the secure payment of the funds strikes us as burdening the system substantially.

And we would urge that consistent with due process that the administrative and judicial rights of appeals and the enforcement of

employer sanctions be somewhat limited, to a single administrative hearing and a single level of judicial review.

Finally, sir, with respect to the transition nonimmigrant agricultural worker program, we have some general observations on the program, and in addition some recommendations.

We believe that any such program ought to serve several objectives. One, meet the legitimate needs of the employer, clearly. Second, not encourage additional illegal entry into the United States. Said another way, the existence of that program ought not act as a magnet for those persons who have not yet thought about coming, but with this program are encouraged to do so.

Another objective should be that the Federal Government control the registration and the documentation of participating aliens. The existence or the presence under such a program of a number of people who are aliens should in fact be under the control of the Federal Government.

The incentives and mechanisms for requiring the alien to return to his or her home upon completion of either their employment or the program have got to be looked at. Our objective would be to provide those incentives to return.

And finally, from a practical point of view, in imposing a registration requirement, it ought to be efficient, convenient, and sensitive to one, the needs of the Government and at the same time a recognition of the practical operating circumstances of the employer who uses such labor.

The transition program as proposed causes us two concerns. Open-ended eligibility and the lack of definition regarding who could participate is of some concern to us. As written, it does provide an incentive to the person outside of the United States to seek participation in the program and come forward.

And we would suggest limitation to illegals within the United States with a history of working within the agricultural industry, and with some prior ties to specific employers as a means of showing previous participation.

Second, as I have indicated, a further concern that we have is that registration does take place under the control of the Federal Government. It would be our desire to first, control to some degree who participates in the program, and second to screen out undesirables who use this particular program as a means of entry into the United States for other purposes.

It would be our intent that if there were such a registration program, to do so within the first 12 months, and do it in a way that is sensitive to the particular operating requirements of the participants.

With that in mind, sir, that concludes my summary. Thank you. [The prepared statement of Mr. Riso appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Riso. Mr. Barnes.

**STATEMENT OF A. JAMES BARNES, GENERAL COUNSEL, U.S.
DEPARTMENT OF AGRICULTURE**

Mr. BARNES. Mr. Chairman, thank you. I very much appreciate the opportunity to appear before the committee today on behalf of

the Department of Agriculture. As you suggested, Mr. Chairman, I will simply submit my statement for the record, make a couple of summary comments, and then take any questions that the committee might have.

The Department of Agriculture's concern on this issue is, of course, somewhat limited, and it is primarily directed to assuring that as the Nation moves toward obtaining control over its borders, that it not unduly disrupt the agricultural sector.

We think it is particularly important that if it is going to become illegal to hire undocumented workers, then there ought to be a mechanism for providing an adequate, timely, legal supply of labor for agriculture.

We think that this is a matter of fundamental fairness. And, as some of the previous witnesses have indicated, it is also critical to make sure that we do not disrupt the production of crops, reduce our Nation's self-sufficiency, adversely affect our producers and consumers, and destroy what is now a very positive contribution that agriculture makes to our balance of payments.

Also, as some of the earlier witnesses had suggested, we think the problem of replacing a current work force that has large numbers of illegals is the greatest in the Southwest and west coast, although it's become increasingly clear over the last year that employers in other parts of the country thought their workers were legal aliens when in fact they were not.

A lot of the concern of the agricultural community arises out of a combination of the effect of sanctions together with an unknown of what effect the legalization provisions of the act are going to have on agriculture. How many people that are part of the current work force are going to be eligible for legalization, how many are going to seek to apply, and of those, how many will stay doing agricultural work?

The fact that there is this large question in combination with the fact that we feel very strongly about not having an undue disruption in agriculture led us to the need that was not addressed in some of the early versions of the immigration control legislation, that is, a need for a temporary agricultural worker program, so that there is a mechanism for producers to have access to workers. People have seized on the current H-2 program as possibly a model for that, and the administration developed a proposed statutory program based on that.

If this committee and Congress considers the temporary agricultural worker program in the bill, it's important to emphasize the differences between the east coast—where the H-2 program currently finds its primary use—and the west coast and Southwest areas, where the agricultural situation is different, where there's the need for flexibility to enable workers to move from one farm to another or one crop to another, and where the changing labor needs are much more evident. Also, larger numbers of workers may be needed, and the necessary housing may not be available.

So we strongly urge that this committee support a flexible temporary worker program. We also think that it's critical, even with the inclusion of a temporary worker program in the bill, that there be a mechanism to bridge the time between the time an immigration control bill takes effect and the time that the Government

would be prepared to put an expanded H-2 program in place and producers would become accustomed to using it. For this we need a transition program.

We're very pleased that both the House and Senate versions of the bill have a transition program. For reasons we might get into later, we have a preference for the Senate transition program, but in summary, Mr. Chairman, we are pleased that the Department of Agriculture has been included in the series of hearings that Congress has held. We think that it's also critical that any legislation that's ultimately enacted provide a place for the Department of Agriculture and the legitimate agricultural interests to be accommodated as well as the other competing interests of the labor sector, the foreign policy sector, and the law enforcement sector. And we're pleased that that role for the Department of Agriculture has been recognized in the legislation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Barnes appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Barnes.

Next witness is Ms. Houston.

STATEMENT OF ROBERT W. SEARBY, DEPUTY UNDER SECRETARY, INTERNATIONAL LABOR AFFAIRS, U.S. DEPARTMENT OF LABOR, PRESENTED BY MARION F. HOUSTOUN, IMMIGRATION STAFF SPECIALIST, BUREAU OF INTERNATIONAL LABOR AFFAIRS, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY JOHN HANCOCK, MANPOWER AND DEVELOPMENT SPECIALIST, EMPLOYMENT SERVICES, EMPLOYMENT TRAINING ADMINISTRATION

Ms. HOUSTOUN. Thank you very much, Mr. Chairman. I am sitting here today in place of Deputy Under Secretary Searby, who has asked me to send you his regrets. Unfortunately, he is unable to be here today, because he is representing the U.S. Government this month at the ILO meeting in Geneva.

Mr. Chairman and members of the committee, we welcome the opportunity to appear before you today regarding the labor-related aspects of H.R. 1510, the Immigration Reform and Control Act of 1983. Once again, the basic building blocks of immigration reform, strongly supported by the Department of Labor, are amendments to the Immigration and Nationality Act that would prohibit the knowing employment of aliens without work authorization, provide employers with a mechanism for determining the work eligibility of all job applicants, and establish a legalization program.

Additional controls are necessary because illegal immigration has clearly been increasing. During the past decade, for example, INS apprehensions of deportable aliens increased by more than 300 percent, with an estimated half a million coming in each year.

Illegal immigration is principally the result of international disparities in wages and employment opportunities. Essentially, it is a flow of workers. Effective control of our borders therefore requires control over access to our labor market.

The Department of Labor therefore strongly supports employer sanctions. We believe it is a critical step toward improving the em-

ployment opportunities and the wages and working conditions of low-skilled American and legal immigrant workers, with whom most undocumented workers compete.

While it is impossible to quantify the precise impact of this additional supply of undocumented workers on U.S. workers, the laws of supply and demand dictate the direction of those effects. Like any increase in the supply of low-skilled labor, illegal immigration reduces the employment opportunities of low-skilled workers in this country. For example, in a cautious speculation, labor economist Michael Wachter has suggested a 20-percent displacement effect. This does not include displacement of U.S. workers who leave the labor force entirely and therefore do not count as unemployed. According to Wachter's assumptions, this latter group could be about the same size as displaced unemployed workers; that is, another 20 percent of the total number of undocumented workers.

In considering the reasons for immigration control, it is also important to recognize that the claim that undocumented aliens are employed only in jobs that Americans will not take is a claim that cannot be sustained. In 1982, close to 30 percent of all workers employed in this country, some 29 million people, were holding down the kinds of low-skilled industrial, service, and agricultural jobs in which undocumented workers typically find employment.

It also cannot be claimed that Americans will not take low-wage jobs. In 1982, an estimated 8.8 million workers were employed at or below the minimum wage, \$3.35 an hour. An estimated 4 million more were employed in jobs within 25 cents of that minimum wage.

The U.S. workers with whom illegals compete are demonstrably also our most vulnerable workers. The unemployment rate of blue-collar workers in 1982 was nearly three times that of white-collar workers, 14.2 percent as compared with 4.9 percent.

In addition, as we all know, the unemployment rates of young workers, blacks, and Hispanics, many of whom are low skilled, have been conspicuously high during recent years.

Let me speak briefly about the H-2 program. The Department of Labor operates the numerically unrestricted H-2 labor program through the provisions of section 101(a)(15)(H)(ii) and section 214(c) of the Immigration and Nationality Act [INA]. The H-2 provision of the Immigration and Nationality Act restricts such nonimmigrants to aliens who are coming temporarily to the United States to fill temporary jobs if unemployed persons capable of performing such services or labor cannot be found in this country. Let me emphasize that, like all nonimmigrant workers or nonimmigrants generally, there are no numerical limitations on H-2 admissions or H-2 labor certifications.

Section 211 of H.R. 1510 would amend INA provisions relating to H-2 workers. This proposed codification proves to be both technically complex and very controversial. The administration believes that its substitute H-2 provision, which was one of many submitted in this and the last Congress, submitted on May 6, 1982, aimed at a reasonable balance between the interests of U.S. workers and agricultural employers.

While the administration recognizes that some employers have legitimate needs for the temporary services of nonimmigrant alien

workers, particularly in the event of employer sanctions, we also believe that U.S. citizen and legal immigrant workers should be employed whenever possible, and that American employers should be required to offer jobs to qualified workers in the United States before being allowed to recruit aliens abroad.

One aspect of the administration's substitute H-2 provision that we think very critical is that related to a limitation on the duration of stay of H-2 workers. While H.R. 1510 is silent on this issue, we believe that a limitation on the duration of H-2 admissions is an essential immigration control mechanism.

Finally, in accordance with our concern to enact effective employer sanctions while also insuring that agricultural employers, along with other employers in genuine need of temporary alien workers, have access to this program, we are also concerned that this Department's current regulatory authority for the H-2 labor certification program be codified, while balancing that codification with retention of the Attorney General's final authority over the admission of H-2 workers and the provision of a new statutory consultative role for the Department of Agriculture.

Thank you very much, Mr. Chairman. I see I've gone over my time.

[The prepared statement of Mr. Searby appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you. Thank you very much.

That concludes your lead witnesses on the panel. Do you have anyone that will testify?

We're presented here with a dilemma in that I know there are questions, and I have several questions. We have a 15-minute plus a 5-minute vote, which may mean that we could be detained for about 25 or 30 minutes, at least. Do any of you have any problems with taking part of the afternoon off if we recess at this time for lunch?

[No response.]

The CHAIRMAN. I hate to do this. I had hoped that we could finish with you by the noon hour. It probably would be better if we return at 2 p.m., if you'd be kind enough to cooperate with us to this extent, and then we will continue the hearing.

So, the committee will stand recessed until 2 p.m.

[Whereupon, at 11:45 a.m., the luncheon recess was taken.]

The CHAIRMAN. The committee will be in order.

We just concluded a vote on the House floor. I am sure some of the other members will be coming along. I did not want to delay any longer, as all of you were kind enough to return this afternoon.

While we are waiting for the other members, I have a series of questions that I would like to ask. They would be the Department of Labor as it relates to wage and hours and to OSHA. I guess it would be you, Ms. Houstoun or Mr. Hancock.

Under the the wage and hour provisions of the Department of Labor, you have regions and districts throughout the country, is that correct?

Ms. HOUSTOUN. That is correct, sir.

The CHAIRMAN. And you have surveillance for the enforcement of wages and hours?

Ms. HOUSTOUN. There are both regional offices and local offices. And I think that there are about 300 offices throughout the country.

The CHAIRMAN. And do you have systematic surveillance or oversight over businesses complying with wage and hour provisions?

Ms. HOUSTOUN. Yes, sir.

The CHAIRMAN. Now, when you do that, does where the employees come from have any bearing on your surveillance or your oversight?

Ms. HOUSTOUN. We enforce the labor laws. We do have a small program that has been in effect since 1978, which involves targeted enforcement of the Fair Labor Standards Act at alleged employers of illegal alien workers. We have been coordinating with the Immigration Service since 1978, with about 13,000 of our FLSA investigations targeted at alleged employers of illegals during 1983.

This has been particularly the case in the garment industry in New York City, Miami, and Los Angeles. But we do not enforce immigration laws. We refer any immigration problems to the Immigration Service.

The CHAIRMAN. We could correctly say you have continuous, constant surveillance over the wage and hour provisions of U.S. law?

Ms. HOUSTOUN. Enforcement of those labor laws is our responsibility.

The CHAIRMAN. Whether the employees came from the Moon, Timbuktu, or China, you enforce wage and hours?

Ms. HOUSTOUN. Correct. A worker is a worker is a worker.

The CHAIRMAN. The same way for OSHA?

Ms. HOUSTOUN. Yes; although, OSHA enforces workplace health and safety standards.

The CHAIRMAN. The reason I am asking is that, more so in Mexico, but also here in the United States, there is widespread belief or rumor that somehow the illegal worker gets abused daily and systematically with regard to wages. And one of the things you hear most often is, "Well, they want illegals because they pay them less."

But you see to it they get paid the same thing when you have surveillance over the vast United States, right?

Ms. HOUSTOUN. We cannot insure that a Mexican worker or any other worker gets equal wages with another worker.

The CHAIRMAN. No; I am not talking about equal wages. I am talking about the wage and hour provisions.

Ms. HOUSTOUN. Correct.

The CHAIRMAN. You enforce minimum wage, and beyond that the law does not provide except on rare occasions.

Ms. HOUSTOUN. That is the distinction that I wanted to make, yes. Any worker who is paid illegal wages in this country is protected by our labor laws. And as part of our program, the special targeted enforcement program [STEP], which is targeted at suspected employers of undocumented workers, includes a method by which backpay found due to unlocatable Mexican workers may be forwarded to them through the Mexican Consulates in this country.

One of the reasons that we started this program is that FLSA enforcement is typically triggered through complaints. We under-

stand that undocumented workers are not very likely to complain. Therefore, we have made special targeted efforts, so that we are enforcing FLSA without complaints being filed by workers, in order to try and compensate for the fact that undocumented workers typically do not feel as free to complain about their working conditions as American workers would.

The CHAIRMAN. Very good. Then you have a regular procedure, and then you have a special procedure.

What would you say is the percentage of cases of someone being systematically paid illegal wages below the norm?

Ms. HOUSTOUN. I really cannot answer that question. I can probably speak to probable percentages of undocumented workers on that issue. But I am not with the Employment Standards Administration. And if I may, I would like to refer that question to them.

The CHAIRMAN. If you are doing a good job, they are getting paid what they are supposed to get paid, right?

Ms. HOUSTOUN. Right.

The CHAIRMAN. And I would assume that you are doing a good job.

If there is abuse, it would not be the norm, but rather the exception?

Ms. HOUSTOUN. It is illegal.

The CHAIRMAN. And it is illegal. And the employer would pay, what is it? He would pay double wages, and a civil penalty, and a criminal penalty?

Ms. HOUSTOUN. Yes; under the FLSA, employers may be held liable for the amount of unpaid wages and an equal sum in liquidated damages. In addition, willful violations of the FLSA may bring criminal prosecution of an employer with a conviction resulting in a fine of up to \$10,000, 6 months imprisonment, or both.

The CHAIRMAN. And the same way for the safety factor with regard to OSHA?

Ms. HOUSTOUN. Yes.

The CHAIRMAN. Thank you, very much.

I guess that this would apply to the INS. Because you have to deal, also, with court decisions. But there is this mistaken prevalent view that somehow an illegal gets different treatment in the courts or in the judicial process than does the legal person.

Would you give us your interpretation of whether that is a correct statement or not?

Mr. RISO. There is no different treatment with respect to the illegal versus the legal with respect to his rights. He has a series of rights. And the policy and practice is to give them to both groups. There is not a determination of a different series of rights to the two.

The CHAIRMAN. The cloak of the constitutional guarantee falls on every person that is within the jurisdiction of our law regardless of whether they came from the Moon or Timbuktu, is that not correct?

Mr. RISO. That is the policy.

The CHAIRMAN. So anyone that assumes or says that somehow they are treated differently, and there are exceptions, of course, but the constitutional cloak falls on every person whether he is here legally or otherwise, correct?

Mr. RISO. From a policy point of view. And if you would permit one amendment or one addition to that thought. That in the pursuit of protecting your rights, you have to be willing to come forward. Because of the inhibition which a person with illegal status might have about coming forward, he or she might be sacrificing a right they do have, and therefore become more vulnerable. That is often the practice, if you will, versus policy.

The CHAIRMAN. But a Federal judge, a State judge, the INS, or anyone who apprehends an individual under a violation of a criminal law, be it the *Miranda* decision, constitutional warnings—all of that applies regardless of whether the individual is legal or illegal, correct?

Mr. RISO. That is right.

The CHAIRMAN. Now let me ask of the representative of the Employment Service: At the present time and under the bill we have before us, which to us is the final version—it may not be later, but that is what we are dealing with here today, if an alien is referred by an employment agency to an employer, who would be responsible to ascertain whether he is here legally or not? Would the Employment Service do that?

Ms. HOUSTOUN. Under the current bill, H.R. 1510, Mr. Chairman?

The CHAIRMAN. Yes.

Ms. HOUSTOUN. We are not very clear about that. The language to us is rather obscure. Currently the Employment Service does seek to find out if an individual who comes for assistance to the Employment Service is a citizen or an immigrant. So that we ask about citizenship or legal alien status.

The CHAIRMAN. You do that?

Ms. HOUSTOUN. We do that currently.

The CHAIRMAN. So then the prospective employer will not have that burden again?

Ms. HOUSTOUN. As we understand that amendment, to which we have some rather grave reservations, the amendment would substitute our checking, and indeed require the Department to verify the status of an individual referred by us to an employer. So that the employer would no longer have to check himself. It is a substitute of an Employment Service check for the requirement of an employer check.

The employer would thus be exempt from sanctions which would apply to all other employers.

The CHAIRMAN. If the prospective worker comes from the Employment Service, right?

Ms. HOUSTOUN. Right.

The CHAIRMAN. Let me ask the INS to comment on the length of stay of the average H-2 worker in this country. And there is overlap between Labor and INS. Either one of you, whoever feels comfortable with the question.

Ms. HOUSTOUN. As you said, it is sort of mixed up, Mr. Chairman. We do certifications, and will certify a particular activity and a particular crop. Then the Immigration Service admits aliens. We look at the jobs, we do not look at the aliens.

The Immigration Service would admit per the certification. And at that point, I would give it to INS.

Mr. CARMICHAEL. Mr. Chairman, INS can extend the temporary stay of persons admitted in the H-2 status for as long as a certification exists, and so long as it appears to us that the purpose of the stay in the United States is temporary, and the services required are temporary.

When doubts arise to either of the latter, then we might be inclined to consider denial or termination of that status. H-2, we must remember, is a status reserved for those who are coming temporarily to do a temporary service.

The CHAIRMAN. That is right. The pending bill gives that authority to Labor, I understand.

Is that your understanding, or that it remains with INS?

Mr. CARMICHAEL. The certification remains with the Department of Labor, Mr. Chairman. The admission and length of stay remains with the INS.

The CHAIRMAN. Well, counsel has given me the section that I had looked at. And under the H.R. 1510 as reported, on page 63, it has a provision, "an alien may not be admitted to the United States as a nonimmigrant under Section 101(a)," et cetera, et cetera, "for an aggregate period longer than the period—or periods—determined by regulations of the Secretary of Labor."

Ms. HOUSTOUN. Oh, I see. I think that that is a codification of current regs in the sense that the INS nonimmigrant visa, which we the Department of Labor would have nothing to do with, would be for the period of certification.

We would certify a particular job for a particular crop activity and for a specific time. For example, for apples, it would be 6 weeks. For citrus in Arizona, it has been 5 months. Tobacco, 6 months, et cetera.

INS would admit per the certification, correct?

Mr. CARMICHAEL. That is correct.

Ms. HOUSTOUN. So as I understand it, that amendment would codify the current circumstances and regulations.

Is that correct, Mr. Carmichael?

Mr. CARMICHAEL. That is correct.

The CHAIRMAN. So you put the time requirement to the specific job, and shift that back to INS?

Ms. HOUSTOUN. Yes.

The CHAIRMAN. And they say yea or nay?

Ms. HOUSTOUN. Yes, it is a worker visa. It is a temporary worker visa. And the point of the visa is to fill that employment, that specific job. So the duration of stay would be per job.

The CHAIRMAN. Do you vary length of time to jobs like tobacco, would you say 5 weeks this year, and next year you could say 6 weeks?

Mr. HANCOCK. Mr. Chairman, when an employer requests H-2 workers, the employer specifies what period of time those workers are needed for, whether it be 6 weeks, 6 months, whatever. The certification that is granted by the Department would be for the period of time the employer requests. That may vary from year to year.

The CHAIRMAN. So then you are guided basically by the length of time that the employer feels that he needs the worker for?

Mr. HANCOCK. That is correct.

The CHAIRMAN. What would be the longest period that you have certified?

Mr. HANCOCK. Under the current regulations, Mr. Chairman, the longest period of time for which we can certify a job under the H-2 program is 11 months.

The CHAIRMAN. Eleven months.

Now let me ask you along with that: When you specify the time, how does the Department of Labor determine when an industry requires special regulations, such as like for sheepherders out in the West?

Mr. HANCOCK. The Department of Labor does not actually issue special regulations for industries that have special peculiarities that are not akin to those of other industries using H-2 workers.

However, certain allowances and certain flexibility are built into the existing program to accommodate the special peculiarities of some industries, such as the sheep industry, using the example you used, Mr. Chairman.

The sheep industry is unique in that aliens are used in 10 States in the Far West. The ranchers are spread out over a wide geographic area. The requirements that we have for housing are somewhat different, because these individuals are out on the range for long periods of time.

And there are a number of factors that have led us to the conclusion that the sheep industry does have special requirements and special peculiarities that should be treated somewhat differently.

The CHAIRMAN. And you allow for that within your discretion?

Mr. HANCOCK. Yes, sir.

The CHAIRMAN. And in cases where individuals are independent contractors, bonafide independent contractors, who is authorized to make the request for certification for H-2's, how do you handle that?

Mr. HANCOCK. Our regulations provide a definition for employer, Mr. Chairman. If a contractor meets our definition; if this contractor hires, fires, controls, supervises, and pays a worker; if that person is the employer of record, then that contractor would be the person filing the application for the H-2 workers.

The CHAIRMAN. Do you have definite, unequivocal requirements that need to be fulfilled?

Mr. HANCOCK. Yes, sir, I have the regulations right here.

The CHAIRMAN. So one either falls into it or not, is that correct?

Mr. HANCOCK. Yes, sir.

The CHAIRMAN. Do you know if there have been any court cases or any court decisions on borderline cases of who is an independent contractor?

Mr. HANCOCK. There are none that I am aware of, sir, as regard to the H-2 program.

The CHAIRMAN. So basically the regulations as you have are applicable and working?

Mr. HANCOCK. Yes, sir.

The CHAIRMAN. Under the prospective legislation, do you see any item in the law that would force you to change those regulations?

Ms. HOUSTON. Well, clearly, H.R. 1510 would call for new regulations, sir, quite explicitly.

The CHAIRMAN. In that area?

Ms. HOUSTOUN. In the H-2 program, yes.

The CHAIRMAN. As to whether a person is an independent contractor or not?

Ms. HOUSTOUN. No, I do not believe that that has been an issue.

The CHAIRMAN. That is what I was asking.

Ms. HOUSTOUN. Oh, I am sorry. I thought that you were speaking generally.

The CHAIRMAN. No, no. I am speaking only of the independent contractor.

Ms. HOUSTOUN. To my knowledge, that issue has not been discussed in any of the conversations on this bill.

The CHAIRMAN. So the odds are your present regulations would continue unless otherwise addressed in the law?

Ms. HOUSTOUN. Clearly, we would have to have new regulations, if this bill is enacted.

The CHAIRMAN. I mean only on the independent contractor, not on H-2.

Ms. HOUSTOUN. That specific issue has not arisen. I think that if H.R. 1510 is enacted, I think that it has a specific definition of employer per an IRS definition, but I would have to check that out. The specific issue of independent contractor has not arisen.

The CHAIRMAN. Now I know that this is not in your field, but since you mentioned IRS, and I think that you would be qualified to answer.

IRS also does the same as you do on wage and hour, also the same for Federal income tax, and your social security and so on, to your knowledge, is that not so?

Ms. HOUSTOUN. That is not my expertise at all, Mr. Chairman, except as a taxpayer.

The CHAIRMAN. Yes, how well we know. I think that we could take judicial notice that the IRS probably more forcefully enforces than does Labor. So whether the employee comes from any part of the world, IRS will be there to see that the employer withdraws the necessary taxes, which are then forwarded to Uncle Sam.

Whomever of you on the panel can answer, can you explain any differences in the transition programs as provided in both the House and Senate bills; that is, would there be any difference in numbers of foreign workers, or would employers fall under the H-2 regulations under both bills?

Mr. BARNES. Well, I might note a couple of differences, Mr. Chairman. I believe that the Senate bill sets out a clear tie between the transition worker and previous employment in agriculture requiring that he or she had worked at least 90 days in agriculture since 1980.

I do not think that the requirements of H.R. 1510 are very clear in that regard as to who might be used as a transition worker. So there is the potential for some difference in numbers. And at the same time, I think that both of those transition bills contemplate the issuance of regulations by the executive branch which would put some form and shape on that. And that might draw those two models in line.

The CHAIRMAN. Thank you. One final question. I have taken too much time with both Labor and INS.

But you testified, Ms. Houstoun, that in your special targeted program to areas which would be prone to have illegals, that you worked to see that they recouped their wages if they are apprehended, or any wages that were earned but not paid, you involve yourself with that, do you not?

Ms. HOUSTOUN. I personally do not, but the Employment Standards Administration certainly does.

The CHAIRMAN. The Employment Standards Administration.

There is that provision?

Ms. HOUSTOUN. Yes.

The CHAIRMAN. And about INS I am told that whether by practice or by directive that if a border patrolman or immigration inspector apprehends someone in the field, that they endeavor to see that he collects what money is due to the person; do you have any activity along that line?

Mr. RISO. That is our policy, sir.

The CHAIRMAN. That is your policy?

Mr. RISO. Yes.

The CHAIRMAN. So again as I hear throughout the world that if anyone does not want to pay an illegal, he calls the Immigration Service, they come and pick him up, and take him away, and he does not have to pay. The odds are that this is not correct, is that so?

Mr. RISO. Absolutely.

The CHAIRMAN. You see my concern is that the wrong image—maybe I will be making a little speech on your behalf and our behalf as a country and as a people—is being given by persons ignorant of our system outside of the borders of this country: That somehow we as a people are abusing every illegal alien, that they are being paid subminimal wages, that they are being starved, that they are being abused as far as occupational safety. And that somehow if you just get tired of them, you call the border patrol, who comes and takes them away, and you do not have to pay them.

From your testimony, this is not so. Our laws provide that the cloak of the Constitution applies to every person. The wage and hour laws work. And there may be as always the one exception here and there. But this is not the norm, and this is not the practice, and the Government per se attempts to see that this is not the norm and that this is not the practice.

Is that correct?

Mr. RISO. It serves the purpose of some interests and some groups to project both the INS and different other enforcement agencies as participating in a systematic meanness, discrimination, and whatever against the illegal alien.

I can say unequivocally that that is not the policy of INS. Yet I am not unrealistic enough to tell you that on different occasions different events happen, which we do not want to have happen. Those get seized upon, and those are what would get to be promulgated as though they are institutional policy. But that is not the case.

The CHAIRMAN. That was going to be my final note, and you said it. We are all humans. A border patrolman can make a mistake, an immigration inspector will make a mistake, the Labor Department, or Congress, or any one of us can make a mistake.

Mr. Morrison, did you wish to follow up on your question on housing?

Mr. MORRISON. Thank you, Mr. Chairman. Let me first commend you on your line of questioning. You have covered a number of things that came from this morning's testimony, and I am proud to serve under you on this committee.

Perhaps first for the Department of Labor, I am a little concerned about the certification procedure. Ms. Houstoun, your testimony indicated that we have an ample, willing, and available work force, and then we proceed to talk about certification which says, yes, but there is not a work force available in this particular arena.

I would then like to explore how do you proceed to get certified. And how particularly, as you heard our panel this morning from the Northwest, where we have no record of using the program like H-2, how do we run the trap line with you to say we are totally dependent for these short-term harvests on a work force that does not seem to be living in our immediate area?

Ms. HOUSTOUN. In giving you that data, I was speaking to the work force as a whole. Because my underlying point, and one of the points of the Department in recent years is that illegal immigration is not just agriculture as it was 10 years ago, for example.

So I do not mean to imply that there is a work force which is adequate to meet the needs of agriculture today.

Mr. MORRISON. Excuse me, right there.

Do you have figures that you can share with the committee; what percentage is agriculture of the illegal work force that you see across America?

Ms. HOUSTOUN. We did some rough calculations about a year or two ago for the task force. And what we did was look at different surveys that were available on occupation of illegals. It is very rough, and each of the studies are biased in some ways. Each is a different window.

Taking those together, and trying to shake them down, and make an educated guess, we guess that about 17 percent, I would say under 20 percent to make it rougher and therefore more accurate, that less than 20 percent of our Mexican undocumented workers are in agriculture.

Now the percentage of undocumented workers who are not Mexican is generally thought to be around 40 percent, and I think that a fair guess would be that about 2 percent are in farmwork in the United States.

So if 60 percent of the total population of undocumented workers are Mexican, about 40 percent non-Mexican, and probably only 2 percent of all non-Mexicans in agriculture, and 17 percent of the Mexicans, you are talking about roughly 10 percent of the total number of all undocumented workers in this country.

Mr. MORRISON. It is interesting how agriculture seems to get the brunt of the publicity.

Ms. HOUSTOUN. That is for historical reasons more than anything else, I think. Historically, illegal immigration was very much a Southwest phenomenon. It was very much a product of the agricultural sector. That has changed radically in the last 15 years.

The CHAIRMAN. Will the gentleman yield?

Mr. MORRISON. I would be glad to yield to the chairman.

The CHAIRMAN. I would like to enter a personal note here that is historical of the Southwest: You moved the border on us. [Laughter.]

Ms. HOUSTOUN. That has been frequently noted in the course of this debate.

The CHAIRMAN. I thank the gentleman.

Mr. MORRISON. An excellent point, Mr. Chairman.

I guess that as an individual grower, or say on behalf of a number of small growers, is there any way that I can get an association certified under the H-2 program?

Mr. HANCOCK. Yes, sir. I mentioned awhile ago that we have in our regulations a detailed definition of an employer. There are provisions for small employers such as those that you described in Washington banding together to form an association. This has been done in many instances on the east coast.

Mr. BARNES. Congressman Morrison.

The CHAIRMAN. Mr. Barnes.

Mr. BARNES. I might add that one of the critical factors from our perspective on the H-2 program that would be part of this legislation is that there ought to be a vehicle for utilizing associations to bring H-2 workers in, and for allowing to move them back and forth between the employers—so as to address some of the points that you and the growers raised this morning.

It just does not make sense to have each small grower go through all of the paperwork for the 2 weeks or 3 weeks that they may need temporary workers. But when you look at the nature of agriculture on the west coast—like in some of the vegetable areas where people are moving back and forth between crops—you can bring in a number and allow them to move from farm to farm and from crop to crop, and it might permit you to come closer to the free market movement of labor that you have now.

It might differ from what is the traditional pattern of H-2 on the east coast where it is focused on one crop.

Mr. MORRISON. Mr. Hancock, do we have flexibility to harvest different crops?

Mr. HANCOCK. Yes, that situation exists pretty much nowadays. I believe it was mentioned that a labor certification is issued for a job that is certified for a certain period of time. These certifications are now issued to associations of employers, and the association is free to transfer this certification among various employer members of the association.

Mr. MORRISON. Could we discuss housing for a moment, as brought up by the chairman.

Do you see any housing alternatives? We now seem to have workers who fit within the community for at least temporary periods of time. We have built into the bill as it comes from the Judiciary Committee a housing allowance that could be paid in lieu of the provision of housing for a very short-term harvest.

What sort of flexibilities do you see as being possible from your point of view?

Mr. HANCOCK. Well, rather than address that directly, may I comment on the flexibility that exists now. We do not have anything at present that talks directly to a housing allowance. Howev-

er, I have noticed there are a lot of misconceptions about the requirement of housing.

There is no requirement that an individual grower have housing on that grower's property to take care of the workers who come in from foreign countries or from other parts of the United States, and cannot return to a residence in the same day.

Our present regulations provide that the employer has to assure the availability of housing. That may be housing, old farm housing, for example, that exists on the property right now. It could be a large labor camp which is paid for and maintained by an association of employers, such as we have in the East, which I noted.

It could be the utilization of mobile home housing, of which there is an abundance in southern Virginia belonging to the tobacco growers who requested H-2 workers about 5 years ago. It could be housing that is available in nearby communities. I believe that someone from Washington described the situation in the Yakima Valley where there are communities 9 or 10 or so miles apart with housing available in those communities.

Mr. MORRISON. Does that housing have to meet standards?

Mr. HANCOCK. The housing, sir, has to meet certain standards, minimum standards, which are meant to insure the health and safety of the occupants. And even though we have regulations which get to such issues as the standard measurement for a window, that there must be so much space to insure proper ventilation for x number of people in a room, if there are alternative measures taken—for example, air-conditioning to provide proper ventilation—the standards are met.

The point that I am trying to make is that there is flexibility in the system right now. The regulations that the Department of Labor has, the Employment and Training Administration's regulations and OSHA's regulations, are designed to get to the bottom line of the safety and health of the occupant.

And our inspectors do not come down hard on such matters as standard window measurements or whatever. If housing has been constructed in the community, and this housing was never intended to house migrant workers, our inspectors would certainly take that into account, and would look at this issue of health and safety before anything else.

Mr. MORRISON. I guess that I am concerned that local hotels or motels where my relatives stay when they come to town will not qualify. And our experience with mobile homes was we were rejected because the ceilings were not high enough.

Mr. HANCOCK. I would have to have some specific information to comment intelligently upon that.

Mr. MORRISON. I guess that my concern is that the testimony of both the INS and Labor here has been do not touch the bill the way it comes down the pike. But yet that mandates a cutoff as of the effective date of the act. And all of a sudden all across this country, we are talking about mobile homes, motels. You are talking about people moving into housing that has been OK'd, housing that I would be delighted to have my family live in, and yet they are not cleared by you, so workers cannot live there for a matter of days.

Mr. HANCOCK. Getting back to the issue of flexibility again, sir, the regulations as they stand now provide for variances, waivers, as long as the health and safety of the occupants is maintained.

Mr. MORRISON. I understand your goals, and applaud them. I am just afraid that the practicality is conflicting.

Mr. Chairman, if I may proceed just for another minute or so.

Mr. Riso, you spoke in opposition to the search warrant provision being applied in agricultural fields.

Mr. Riso. Yes, sir.

Mr. MORRISON. Is your opposition to that just a practical thing, and that it makes your job a whole of a lot tougher if you have to go to the court and follow procedures?

Mr. Riso. That in essence the mechanics of doing this makes the law almost unenforceable. The time lag between the identification of what might be a problem, securing the warrant and getting back could be 4 to 5 hours.

At that point, the incident that you are concerned about has long since been over.

Mr. MORRISON. What is the difference between that and the plant right next door which is protected under the law?

Mr. Riso. There are two problems, sir. One of the issues that we have, and I know that it is a sensitive issue, is in terms of the ability to be able to flee from the field, which is in fact the area that we are looking at. The mere act of jumping over a fence, and getting onto another field would preclude us from enforcing the law.

Mr. MORRISON. What is the difference between that and going out the back door of the factory?

Mr. NORTON. I am representing the Associate Commissioner for Enforcement, and my name is Richard Norton of the Investigations Division.

In the act of fleeing a factory, often we can articulate as to the fact that they are fleeing, that they are illegals, that there is a history of illegal employment at that site. Then, the people who are fleeing that site, you, as an immigration officer, can identify that they are illegally in the United States, and have probable cause to ask the people to identify themselves.

In the case of moving from one field to another, we do not have the luxury of entering into another field to block off that access, their ability to move from one field to another, to continually avoid our detection as we seek warrant to warrant to warrant.

Mr. MORRISON. So, if we build alleys between the fields, it would be all right. That is very interesting, and obviously it is a sore point.

Mr. Riso, just one other question.

Mr. Riso. Yes, sir.

Mr. MORRISON. My experience with the small farms' diversified crops which the panel described this morning is one that you may have the same person working for you for 10 years, but he may come to work as far as initial employment maybe 10 or 15 times during a year. Because he is somewhere else for a week, and he comes back then to catch another part of the harvest.

I have proposed an amendment which would allow for the paper-work being done once, and then kept as part of the record.

Could you comment on that, just to avoid some of the excessive duplication that we will find on small farms?

Mr. Riso. We talked earlier about the need to make this operationally sound and convenient. We are concerned about the practical aspects about giving someone under the transition program some means of, if you will, safe passage among various farms that he or she may be working at.

If you are referring to employer sanctions verification, I would like to see more about what you are proposing to get into how you would do that. There is a problem if you confine a person to a specific place regarding the transition program.

Mr. MORRISON. Thank you. Just one last question. One of our problems in the West in many of the crops which we described this morning, the pay is on a piece rate basis. That is so much per box or container of some sort.

And I have had the experience of hiring perhaps part of a family who are going to work on one account. That is, they are paid in one name, and their records are kept under one name. They all have social security cards, and so forth, the things that we can legally check for now.

And yet, a couple of days later, they kind of like the work, so they have added a couple of cousins who I did not hire, but are there working, and emptying their containers on the same account.

Now, as you would see the provisions of the Immigration Act as before us, would I be guilty as an employer? I did not knowingly hire them, but they certainly are there working on a regular basis, and they are probably going to be paid by the patron of the family under whose name the account is handled.

Mr. Riso. Using your example. In the event that you allowed those people to work on your property without going through the act of verification under H.R. 1510, as originally proposed, you would be in violation and subject to a penalty. Now, under the Judiciary Committee reported version in that particular instance, for you to have been in violation, an INS employee would have to have come upon your property with a warrant, found that person, and then warned that you were in violation. And at that point, the provisions of the employer sanction would then begin to be applied to you.

Mr. MORRISON. I guess that I am a little uneasy with that, because we just decided that I would not build a fence around my factory. And all of a sudden someone is working there. That could be a plant. And all of a sudden I am guilty under the law.

Mr. Riso. No, you are not guilty, sir. You are in violation of one of the provisions of the act. And in H.R. 1510 from the Judiciary Committee, for you to have been in violation of the act, we would first have to have found that condition, and warned you that you had in your employ an illegal alien.

Mr. MORRISON. A technical foul.

Mr. Chairman, I appreciate the latitude that you have granted me. And I thank all of you.

By the way after some INS raids in our area, I was called on to do some investigation, because we had heard some of the same complaints which the chairman mentioned. And for those of you in

the INS that did not know, about 50 percent of our folks said they are doing a good job, let them do their work.

The CHAIRMAN. Are there any further questions?

[No response.]

The CHAIRMAN. If not, we thank all of the witnesses. You have been very helpful to us. And your frank answers and your testimony, I am sure will be very helpful to us as we proceed with this legislation. We thank you.

On the next panel, we have Mr. Perry Ellsworth, Mr. William Waldrip, Mr. Steven Karalekas, Mr. C. H. Fields, and Mr. Peter Martori. This is the agricultural employers panel. If you would kindly come to the witness table.

We welcome all of you, and if you have no objection, I'd like you to present your testimony in the order in which you appear on our list, unless you would like to do otherwise.

Mr. ELLSWORTH. That'll be fine, Mr. Chairman. We're not lined up quite that way, but you all can read the name tags. Those are correct, anyway.

The CHAIRMAN. Well, thank you very much. Any prepared statement which you have will appear in full in the record. You could help us expedite this day's proceedings if you could summarize as best as possible. We will begin now with Mr. Perry Ellsworth.

STATEMENT OF PERRY R. ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. ELLSWORTH. Thank you very much. I'm very pleased to be here today.

As others have already said today, the subject legislation is of particular concern to individual employers because of the unknowns involved and agriculture's unique labor needs. Many agricultural producers are presently dependent on undocumented workers. Estimates of the number of undocumented workers vary. No one knows how many will be eligible for amnesty. No one knows how many of those eligible will ask for it, and nobody knows whether the present undocumented agricultural workers, once granted amnesty, will stay in agriculture.

Producers of labor-intensive agricultural commodities need their workers, as it has already been said, at specific times and in specific numbers. It matters not whether a producer's needs are large or small, failure to obtain workers at the proper time can result in crop loss and financial distress.

Our purpose in appearing before you today is to work for language in H.R. 1510 which will enable agriculture to adjust to the Immigration Reform and Control Act in an orderly fashion without crop loss. Each member of this panel will discuss different aspects of the legislation. There should be no repetition.

Let the record show, however, that each of us agrees with and supports the testimony of the others. The legislation before this Congress is much improved over that which was before the 97th Congress. Both bills contain, and we support, a 3-year transition program to enable agricultural employers and workers to phase

into compliance rather than first face what earlier promised to be chaos.

Both bills require the Immigration and Naturalization Service to obtain a search warrant before entering a farm or ranch, although H.R. 1510, parenthetically, provides for an alternative, that the Immigration Service may ask the owner's permission, and, if granted, may enter then without a search warrant.

We support this provision. Farmers and ranchers, as has already been brought out, should not be singled out for separate treatment.

Both bills contain the H-2 program as the source of temporary foreign workers if needed. There are differences in the details, however, and some of them will be addressed later by me and by other panel members.

Both bills provide that the Attorney General, in consultation with the Secretaries of Agriculture and Labor, shall approve regulations to be issued implementing changes in the H-2 program, and we support that provision.

Neither bill, however, addresses fully the problem seen by Western growers of perishable agricultural commodities. You have heard from some prior to our appearance. You will hear from others following this panel.

Contrary to what has been said, one matter of extreme importance to agricultural employers who may find it necessary to utilize H-2 workers to fill a shortfall of U.S. workers is the length of time an H-2 worker is permitted to remain in this country. I don't say that anybody has said that is not important, but further to what has been said would have been better.

The Secretary of Labor, in response to the employer's request, may certify an employer to use H-2 workers for a specific period of time. That period of time is tied to the need of that individual employer. The length of time an H-2 worker may remain in this country is quite another matter, and is at present set by the Immigration and Naturalization Service.

This is as it should be. The Immigration and Naturalization Service is responsible for visa entries and length of stay. H.R. 1510, however, would authorize the Secretary of Labor to specify the length of time a worker could remain in this country. That specific provision should be changed to name the Immigration and Naturalization Service as the controlling agency, not the Department of Labor.

Let the Department of Labor continue to certify employers, and let the INS continue to set the length of stay for H-2 workers. If the need for H-2 workers is as great as many fear it will be, there should be a continuation of the present INS regulation which permits H-2 workers to be transferred from one Department of Labor-certified employer to another, and the INS can determine then the point at which H-2 workers should be returned to their home country.

H.R. 1510 specifies in section 211 that the Secretary of Labor may deny an employer certification for up to 3 years if that employer has been found to have substantially violated an essential term or condition of the program during either or both of the preceding 2 years.

S. 529 provides denial for up to 1 year. While there is no objection to penalizing an employer for a substantial violation of an essential term or condition, denial of certification for up to 1 year should be the maximum.

There's a good chance that even a 1-year denial could cause crop loss and financial distress. A 3-year denial would assure disaster for a farmer or a rancher dependent, under this new law, upon H-2 workers to meet his or her labor needs.

This committee is urged to support a change to H.R. 1510 to limit denial of certification to no more than 1 year.

That concludes my statement, Mr. Chairman. I will be happy to answer questions after the other panelists have addressed their concerns.

[The prepared statement of Mr. Ellsworth appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much, sir.

**STATEMENT OF WILLIAM J. (DUB) WALDRIP, PRESIDENT,
NATIONAL CATTLEMEN'S ASSOCIATION**

Mr. WALDRIP. Thank you, Mr. Chairman.

My name is Dub Waldrip, William J. Waldrip, and I'm a rancher from west Texas, currently serving as the president of the National Cattlemen's Association.

Since I come from out in the same part of the country as Mr. Stenholm, he may have to serve as an interpreter for my remarks, because it sometimes takes me 15 minutes to make a 10-minute statement, so I hope the chairman will be patient with me.

I appreciate this opportunity, Mr. Chairman, to express the opinions and comments of the National Cattlemen's Association and their views on the Immigration Reform and Control Act of 1983. These views have been established through 2 years of careful study, and in March our labor committee chairman, Mr. Ted Hoenibbrook, expressed our concerns in testimony before a subcommittee of the House Judiciary Committee.

Since that time, several changes have been made in the bill, and it has become much less biased, in our opinion, against agricultural employers. However, it is our opinion that certain remaining provisions are unreasonable and should be reconsidered in the interest of fairness to all concerned, and by the way, our statement will be on file as part of the complete statement.

I would like to say, though, Mr. Chairman, that I personally recognize the fact that possibly the chairman of this House Agriculture Committee is not only more familiar with the problem, but with the possible solutions to this particular problem than anybody else we know of, and while the National Cattlemen's Association may not always agree, we would probably bow to your judgment in many of these issues, because as I say, I feel that no one is any closer to it than you are.

We feel that the H-2 program is the key to making this work. However, today I'm not going to express any remarks concerning the H-2 program. I'm going to limit my remarks to employer sanctions. But before I do, I'd like to mention this search warrant provision that just came up.

And we're pleased that the Judiciary Committee agreed to a provision which would require the Immigration and Naturalization Service to obtain a search warrant, or the owner's permission, before entering the property. This is a great improvement over the bill as introduced, which would have been extremely biased, in our opinion, against agriculture.

And we take exception to the Deputy Commissioner's remarks. He says it's a sensitive issue. We could surely agree with that, but we don't understand why surprise is less effective when accompanied by a search warrant than without.

Also, we don't understand why property rights are any less sacrosanct to us than someone who lives in town. We have, as was mentioned, fewer than 10 percent of the agricultural workers. We feel that as citizens we should have the same property rights as the folks who live in the urban areas of this country.

As far as employer sanctions go, the NCA fully realizes that the purpose of providing for employer sanctions is to reduce the incentive for aliens to enter this country illegally in search for work, and presumably illegals unable to find work will voluntarily return home. And we know that's not always the case.

However, we're concerned that such sanctions are being made overly severe to counter an ineffective direct enforcement program. In effect, the intent of the current bill puts the burden of immigration control on a secondary deterrent system, and fails to address properly the role of a primary deterrent system, which should be the responsibility of the Border Patrol and other law enforcement agencies.

Solving a potential problem at the point of origin is always better than trying to control it after it's become a problem. Without a more effective direct enforcement of immigration laws at the point of origin, we feared that the flow of illegal aliens into the United States will not be significantly reduced.

Commonsense tells us that undocumented aliens were simply searched more aggressively for an employer willing to hire them in disregard for the fact that they are not authorized for employment. They will seek casual employment, and with some success will have no incentive to return home, where even casual employment is a luxury.

It should also be noted that the sanctions are not intended to apply to casual hires. That is, those that do not involve the employer/employee relationship. Although by definition, it is better to be unemployed in a rich country than in a poor one.

I might mention that most agricultural workers probably would fall under this casual hire category, at least in our area. Sanctions may be imposed after the employer has been served with notice and has either requested a hearing before an administrative law judge or has waived the right to a hearing by not requesting one.

If no hearing is requested, the Attorney General shall assess the employer, and the assessment is final and unappealable. If the hearing is requested, the party adversely affected by the order may seek review within 60 days in the appropriate court of appeals.

There are several areas where employer sanctions raise potential problems. One, if a hearing is not requested, then the Attorney

General may immediately institute a collection suit, and there's no safety net provided.

And two, the committee report provides that a corporation which has numerous subdivisions that hire independently of each other would be held jointly liable for the violations of its subdivisions, even though there was no connection between the employment at the individual sites of the corporation.

The act does not provide for determination of whether the initial citation was issued for cause, and does not allow for judicial review of the issuance of the citation. The committee report reference to casual hire is confusing and may cause problems in the future.

Sanctions may lead to employer sensitivity boards hiring individuals, that is, Hispanics and Asians, and thereby causing a discriminatory effect among our own citizens.

So it's the view of the National Cattlemen's Association that the civil money penalties of the dollar amount specified provide sufficient incentive to employers to hire only documented workers. In no way can we endorse or accept the concept that employer sanctions should include criminal penalties making a convicted felon of an otherwise law-abiding taxpaying citizen.

Mr. Chairman, I've attached to this testimony three amendments which more adequately address the penalties portion of this proposed act, and in the interest of time I'm going to close, but the National Cattlemen's Association is willing and anxious to work with members of this committee and with the staff to produce legislation that will help to correct the existing illegal alien problem.

We must have—or keep in mind that agriculture needs an adequate labor force at the right times to continue to assure consumers adequate food and fiber supplies at reasonable prices. We appreciate very much the opportunity to be here.

Thank you.

[The prepared statement of Mr. Waldrip appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much, Mr. Waldrip. We appreciate your testimony.

Mr. Karalekas.

STATEMENT OF S. STEVEN KARALEKAS, ATTORNEY, FARM LABOR EXECUTIVE COMMITTEE

Mr. KARALEKAS. Thank you, Mr. Chairman. My name is Steven Karalekas. I'm an attorney in Washington, D.C. Our law firm represents, among other agricultural groups, the farm labor executive committee, which are apple growers in 10 east coast States, New England, New York, Maryland, Virginia, and West Virginia. We also represent tobacco growers in Virginia and North Carolina and the vegetable growers in Presidio, Tex., among others.

We have been involved with the H-2 program now for approximately 11 years, and have provided legal assistance to individual growers and grower associations in trying to work their way through this labyrinth of a system that has existed I guess on the books since the fifties.

Based on our experience working with the H-2 program, the single biggest problem that our growers now face, and that many of

your growers will face when Simpson-Mazzoli is enacted, is the problem of paperwork. The Department of Labor, which is the primary agency for administering the H-2 program, has created a paperwork monstrosity that really is so complex that no grower that I know of or grower association that has participated in the H-2 program has been able to do so without a lawyer, and I think that's a very shameful thing, because the system shouldn't operate that way.

The paperwork situation is one that we feel we need this committee's support to urge, not only your colleagues, but also the Labor Department, to simplify the process. Unless this is done, then the ability of most small farmers in the United States to get into an H-2 program, even as enacted by Simpson-Mazzoli, is going to be sharply limited.

Without getting into too much detail, let me just try to give you a summary of some of the paperwork requirements that a grower or grower association has to go through to get an H-2 worker, and I should hasten to add here that all of the paperwork requirements which I'm about to recite apply to each crop, so if a single employer grows peaches in the summertime and then apples in the fall, he has to go through this whole paperwork process twice.

And there are many farmers around the country that have multiple crops, so you're going to have to go through this drill, the same drill, for each crop activity in each period of employment. We start off with the Department of Labor. The Labor Department has, through its regulations, created paperwork requirements, including a job order, clearance order, which is the basic application process, an application for certification, which requests the foreign workers, a worker contract, a series of assurances that each grower has to execute, and then all sorts of supplementary sheets.

Now, I have a job order in front of me, the first fundamental document with the Labor Department. This is 22 pages, single-spaced, highly complicated technical requirements that are really a trap for small farmers. So this is just the first step in the process.

This goes to the Labor Department, into the system, 80 days in advance of the date of need. It's been the source of litigation, it's been the source of delay, it's been the source of entrapment. It's a document that most growers who've been in the system for all these years look at with great trepidation.

The irony of the whole thing is that we just discovered within the past 4 months that even though the growers are put through this exercise, the workers are not routinely shown the job order. And we've written a letter to the Labor Department saying "What's the point?" Once you've gone through all of this paperwork with your local employment service in the Labor Department, if you're lucky enough to go through the recruitment process and get the certification for the labor that you need, you then go to the Immigration Service, a completely different agency.

The Immigration Service, you have to file an I(129)(b). You have to file a bond agreement that must be executed before a notary public. You then have to file your certification approval notices with the Department of Labor, you've got to do it in duplicate, and you've got to get it in time that they can approve it so that you can get your workers in before your crops start rotting.

Once you get through the Immigration and Naturalization Service process, then you have to go, if you're using Mexicans, through the State Department process. Your workers have to—coming from Mexico must have visas. They must have passports. That requires either you or the workers or you jointly with the worker to file an application for a visa with the U.S. Embassy in Mexico City or one of the consular offices: paperwork, time, and something very difficult for an individual small farmer to do.

One of the recommendations that we are urging, that we think would simplify this whole process is what we call a multiyear master certification application. I think Congressman Morrison may have mentioned that a few minutes ago, but basically what we would like to do is say, "File the master application once. Most of this information is going to be the same year after year after year, and if it's approved and you're in the system the first year, then in the second year rather than going through this whole drill again, just file a single-sheet amendment with the different information that may apply the following year."

As I say, most of the information, the work site, the job conditions are all the same, and it's needless duplication for the growers to have to go through this year after year. And I might add that this is one of the recommendations that the Select Commission made, the Select Commission on Immigration Refugee Policy, to simplify the paperwork.

The other recommendation that we would urge upon the committee is a recommendation that we continue the practice, that the growers be allowed to continue the practice of being able to shift their workers, not only within an association but from employer to employer that may not be in the same association.

Basically, this allows flexibility. It also will mean that you will need fewer workers to come into the United States in any given year, so that if one employer has finished his season, or his crop, that he can—a fellow employer can use the same worker, but he still has to get his certification. So the workers can be moved around, not only within an association, but within the country.

And it's been our experience in the apple industry that this system works, it works well, and we would urge the committee support it, and continue it under the new legislation.

Thank you very much.

The CHAIRMAN. Thank you, sir. Mr. Fields.

STATEMENT OF C. H. FIELDS, ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION, AMERICAN FARM BUREAU FEDERATION

Mr. FIELDS. Thank you, Mr. Chairman. I have three points I want to cover in these oral comments.

First of all, with regard to the housing allowance, that's already been discussed today, but let me say something about that. Section 211 of H.R. 1510, this is page 68 in line 1 of the bill, permits an employer at his or her option to substitute a reasonable housing allowance in lieu of providing free housing, if acceptable housing is available in the proximate area of employment.

It is not clear in reading this language whether this applies only to the H-2 workers, or also to domestic workers who live within

commuting distance of the workplace. This is an important point that should be mentioned in this committee's report, so that it's clear that local workers would not have to be paid a housing allowance.

This concern arises from the fact that the present H-2 regulations require that domestic workers be paid the same and afforded the same protections and benefits as the foreign workers. So this is a matter, Mr. Chairman, we would hope that this committee would discuss in your committee report so that we can clarify that particular point.

The second matter I want to cover has to do with adverse effect wage rates. Section 211(b)(iii) provides that a petition to employ an alien under the H-2 section may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for his certification that, one, there are not sufficient workers who are able, willing, and qualified to be available at the time and place needed to perform the labor, and second, that the employment of aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Similar language is contained in the current act. The Secretary of Labor, acting under this general directive, has for many years promulgated adverse effect wage rates, using a formula to adjust upward from the previous year's adverse effect rate for a particular State.

In the past, the basic data for these determinations has come from quarterly farm labor surveys of the Department of Agriculture. During the last 2 years, the detail and frequency of the USDA surveys have been greatly curtailed, resulting in data that is not reliable for individual States.

Fruit producers in West Virginia under the Department of Labor now find themselves in court due to this situation. We request this committee to propose an amendment to the bill that would correct the uncertainty of this matter in the future, and hopefully solve the current dilemma in the West Virginia situation.

We've been working with Congressman Staggers, who is a member of this committee, in developing appropriate language for such an amendment. The amendment will not in any way have an adverse effect on wages that must be paid to workers, but will specify procedures that must be followed in assuring that wages paid to H-2 workers not have a depressing effect on wages paid to domestic workers similarly employed.

The third point has to do with employment service and documentation of workers. This was already mentioned by Congressman Morrison. I want to mention it again. In section 101, page 5, line 5 of the bill, it provides that employers are required to examine and record certain documents to establish the good faith compliance if accused of knowingly employing an undocumented worker.

It is not clear from reading the language reported by the Judiciary Committee or the report of that Committee whether or not a public agency such as the Federal/State Employment Service must comply with the required examination and recordkeeping of documentation when referring workers to an employer.

I believe the language used there, it says that if such an agency does do that, then the employer would not have to do it, but it does not require the public agency to do the documentation, at least as we read it.

We believe that the bill should make it perfectly clear that any public agency that referred workers should comply with section 101 concerning documentation and recordkeeping. When a grower applies for certification of H-2 foreign workers, he must file a job offer with the employment service and must employ qualified domestic workers referred to him by the service before qualifying for the supplementary foreign workers.

It makes absolutely no sense for the employment service to send nondocumented workers to an employer that he cannot employ, and it makes no sense for an employer to be required to duplicate the documentation or recordkeeping on any worker so referred.

If this committee determines that classification is needed to accomplish this result, we recommend that an appropriate amendment be offered to accomplish it.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fields appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, sir. Mr. Martori.

STATEMENT OF PETER MARTORI ON BEHALF OF THE UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION AND WESTERN GROWERS ASSOCIATION

Mr. MARTORI. My name is Peter Martori of a management firm which manages 3,000 acres of citrus and table grapes in Arizona.

I am here speaking on behalf of United Fresh Fruit and Vegetable Association, Western Growers Association, and agricultural producers.

One point I would like to start out with was in the discussions recently on the Simpson-Mazzoli bill, that has been offered, reference has been made to our experience in Arizona, in which we have been involved in an H-2 program for the past 4 years.

And has been pointed out, this is an example that the H-2 program works and is working in the West.

I think anybody who would take a close look at our experience would come up with an 180-degree opposite opinion; that our experience has demonstrated that the existing program simply does not work; it is unworkable and if applied to smaller growers than ourselves, people with less resources, it is an impossible system to use.

Now, we, in the past 4 years, have been involved in some 17 cases of litigation in order to effectively pursue our intentions to import workers legally. In many of those cases, I think what the Department of Labor stated today as their regulations have been flexible, many judges have determined that a better word would be "arbitrary and capricious."

I think there are many examples that we could state of how that has been the case, and there have been many court cases that have proven that out.

Much of our litigation has been involved in the area of labor disputes. The Department of Labor's policy today is that if two affida-

vits are filed with the Employment Service, then a labor dispute exists, then under their definition, it does therefore exist for the whole job order or the whole workforce of the employer.

At that point, if you file for alien certification, everything shuts down—boom. And until the labor dispute is resolved you are dead in the water.

In Arizona, we have had cases where that has been the case, where in one season nine workers were referred to an employer who had an alien certification. Toward the end of the season those workers went into the field, and within 1 hour were out on the side of the field and declaring a labor dispute and demanding a labor contract.

At the time, since it was the end of the season, and recruiting had stopped and in fact things were winding down, nothing really came of it, but when that employer the following season wished to file a prolabor certification the labor union asserted that the labor dispute still existed, and provided two affidavits to satisfy the Department of Labor's requirements.

During the previous season, the Department of Labor made known to the employer that it was their policy that labor disputes in agriculture do not continue from one season to another.

Well, after the union filed two affidavits, conveniently the Department of Labor's policy changed in which they did continue from season to season.

The Department of Labor stopped recruiting on that employer's order—stopped recruiting all U.S. workers, eventually denied their application for alien certification on the grounds that a labor dispute existed.

That employer asked for a judiciary review in front of a Department of Labor law judge, and that law judge determined that this practice of the Department of Labor was arbitrary and capricious.

The certification was therefore granted for the remaining workers whose jobs had not been filled by U.S. workers.

This again was pursued into the Federal courts, and was upheld by the Federal courts that two affidavits of two people claiming labor disputes cannot deny access of an employer who cannot find U.S. workers to his entire work force.

Yet, as of today, the Department of Labor has done nothing to modify its policies to adopt these court decisions or to adopt any specific labor dispute provision that would clarify this area.

Now, we urge this committee to seek amendments that would clarify this within the Simpson-Mazzoli bill, since it, as written today, provides that the existing policy of having labor disputes determined by regulation be continued.

The Agricultural Employers Labor Committee has suggested an amendment that would accomplish that, and it has been provided to the committee.

Another area of concern in the West is that individual States could deal with the entrance of temporary farm workers in a State on a State level by providing for legislation that would not allow such a thing to occur in that State.

Currently, in California legislature, two bills have been introduced to provide for just that. In the Senate, an immigration bill has been provided for that the admission of nonimmigrant workers

is a matter of national policy and that that law preempts all State and local laws.

We urge this committee to adopt that provision that is provided in the Senate bill and the House bill.

One other area of concern of ours that hasn't been mentioned today is that—it has been stated very clearly that the Agriculture feels strongly about the U.S. Department of Agriculture having a major role in this process.

We support that, but one thing that we are concerned about, that although the legislation authorizes funding for the Immigration and Naturalization Service, an adequate funding for the Department of Labor, no such authorization has been made for the Department of Agriculture.

We feel that it would be appropriate for this committee to suggest such an amendment that the Department of Agriculture be authorized funds necessary to carry out their role so that they could do a job adequate to what they have been requested to do by the legislation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Martori appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much.

Are there questions from the panel?

Mr. Morrison.

Mr. MORRISON. Thank you, Mr. Chairman.

Mr. Karalekas, you mentioned problems with paperwork; I am just wondering if you could estimate how much time it might take for an area like the West that has not participated in this, a number of small growers, to come up with even the first set of paperwork, in order to certify under H-2.

We are talking about a 3-year transition time, but can it even be done in that timeframe?

Mr. KARALEKAS. Well, one of the reasons that we are strongly urging a simplification of the paperwork, it is not only for the benefit of the growers, but also the benefit of the Federal agencies involved in the process.

If the system is not changed significantly right now, and you have a massive escalation in the numbers of employers that are applying, the system isn't going to work. It is going to break down; it just can't happen.

In answer to your specific question, our recommendation in the past has always been to growers to associate themselves in an organization that can afford to get someone to guide them through the process.

Mr. MORRISON. Hire an attorney?

Mr. KARALEKAS. Right.

But, unfortunately, that is the only way that you can do it. The problem is that if the employer tries it himself because of the complexity of this thing, and the hostility of the Labor Department to the application process in and of itself for H-2's, they are going to do a dance for 6 months, 8 months, a year.

In Presidio, Tex., the growers made good faith attempts starting in 1977 to get out of the illegal alien business because they sealed the border at Ojinaga, and the Department of Labor put them

through in 1977, an 8-month exercise which brought them right at the beginning of the season, and they still didn't have their paperwork approved in 8 months. The season had already started. They had to go and have President Carter order the approval of the admission of these workers on an emergency basis.

The same thing happened in 1978. We got involved in 1978; we had to go to the Federal court to get a judge to order the Labor Department to do it.

It has got to be simplified, and I think to get the whole system working properly, it is going to take, in terms of everybody being familiar with the rules, and being able to comply with the requirements, it is going to take 2 or 3 years, anyway.

Mr. MORRISON. If they—let's see, they are certifying about 20,000 workers now, within the United States—

Mr. KARALEKAS. It is a drop in a bucket.

Mr. MORRISON. Compared to what it would need to be, if this—

Mr. KARALEKAS. Right. There are areas in California where 20,000 workers isn't going to meet the requirements. Yet a critical issue here, of course, is that when you go through this paperwork drill, with the Department, and we've got growers now—we are going through it again as an annual process.

We have apple growers that have been in this program for 30 years, and what we do just to try to get through the system, rather than going ahead and formally filing, we provide the Labor Department with an advanced draft; even though it may have been approved last year, they change their rules periodically, so we provide them with an advanced draft.

The Maryland Apple Growers this year—peach and apple growers—filed the advanced draft. It took the Labor Department 2 months to send their comments back, to tell them what is wrong with it, or what the problems are; the growers made all the modifications that were requested by the Department of Labor. They filed the paperwork formally, executed it and so forth, and 45 days after that, the Labor Department sent them another four-page telegram rejecting the paperwork for a whole set of different reasons.

And I say that if we are a small cadre of growers that have been in this program, but when the State of Washington gets into it, when California gets into it; when Texas gets into the H-2 program in a big way, either one or two things are going to happen. Either the Federal agencies are going to have to simplify this thing to the point where it is a feasible system or there is going to be an administrative calamity.

Mr. MORRISON. Thank you. I was afraid you were going to say that.

Mr. KARALEKAS. Sorry. Gloom and doom.

Mr. MORRISON. Mr. Fields, I have had something to do with the housing allowance provision that was adopted in the Judiciary Committee and would like to indicate right now, for the record, that it was our intention that that apply only to H-2 workers and not to other workers who also might be part of the same work force in the same field.

Mr. FIELDS. I think that is the intention but it is not clear from reading that language, and I think something should be done,

either in a colloquy on the floor or something—in the report of this committee, or whatever, to make sure that is the case.

Mr. MORRISON. I would also like to indicate that it had something to do with the public agencies providing documentation, and I will do something to clarify that. It was our intent that this complete agreement, that we should be using, and encouraging both employees and employers to use the agencies which we collectively pay for and it seems ridiculous that they shouldn't be allowed to refer workers who were not cleared as far as their legal work status was concerned.

Mr. FIELDS. Did you notice that little word "if" there? That little word "if" there is what bothered us. If the public agency refuses to do it, then the employer does not have to do it.

It is the little two-letter word "if" that bothers us.

Mr. MORRISON. The intent initially was to definitely force them to do it.

Mr. Martori, do you see that—the possibility that just a couple of workers ending up on a farmer's employment roster could end up intentionally creating the illusion of a labor dispute for the purpose of in effect ruining that farm operation?

In other words, that this could be used as a ploy for organizational efforts.

Mr. MARTORI. Right. As a negotiating tool, you might say, to the district court judge said, "to encourage the employer to negotiate on a contract."

I mean that is flat. In my perspective, that was the case.

And for that matter, it could just as well be somebody else, somebody who is simply opposed to H-2 program, in general, or it could be another employer who wants to slow down the harvest of the competitors' product.

There is definitely a very strong vulnerability in that area.

Mr. MORRISON. So, the certification procedure could be used perhaps a much more effective tool than has ever been devised for organization as well as flat-out sabotage.

Mr. MARTORI. I think the way that it is currently administered, yes, certainly.

It brings the employer into a whole other area of law in which he must defend his actions.

Mr. MORRISON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Stenholm.

[No response.]

The CHAIRMAN. All of you represent employers, and I ask this in all sincerity. Do the people you represent have any problem with what should be the national policy of hiring our own first?

Mr. ELLSWORTH. No problem.

Mr. FIELDS. Let me say, Mr. Chairman, every farmer in this country—every rancher in this country would prefer to hire U.S. citizens, U.S. workers to do his work. There is no question about that.

The CHAIRMAN. Your intervention and presentation here does in no way infringe on what I would consider should be the national policy, is that correct?

[No response.]

The CHAIRMAN. Mr. Tallon, do you have any questions?

Mr. TALLON. Yes.

The CHAIRMAN. The gentleman from South Carolina.

Mr. TALLON. Thank you, Mr. Chairman.

Mr. WALDRIP, is this legislation reported from the Judiciary Committee casual employment is not illegal. Is this a good idea? And do you think it would release immigration enforcement personnel to police the large employers who use alien labor on a consistent basis?

Mr. WALDRIP. I think so. The way I understand it, I think that much of the labor in the beef cattle industry would be considered casual, because it is of short duration, and many times it is the contract type of job.

Mr. TALLON. It's a noncontract?

Mr. WALDRIP. For instance, most of them are on their way to the cities, and they will do 2 weeks' work for enough money to get on to where another employment in their opinion is.

And I'm speaking now from first hand experience in west Texas. I am not sure about the National Cattlemen's Association completely, but I would imagine it would be similar, that much of our labor is of very short duration, alien, illegal.

Mr. TALLON. And it would fall under this casual category?

Mr. WALDRIP. Much of it would.

Mr. TALLON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Waldrip, may I ask—I do this only because it is part of nostalgia, and because of where you and I grew up in, what America in the West used to be—but are there any genuine cowboys left? [Laughter.]

Or is that why you are here today?

Mr. WALDRIP. Mr. Chairman, somebody asked me how many cowboys we had on our ranch, and I said about a third of them.

The CHAIRMAN. Someone that can ride a horse, mend the fence—

Mr. WALDRIP. There are some genuine cowboys left.

The CHAIRMAN. Rope a calf, brand a calf—

Mr. WALDRIP. You bet; good ones.

The CHAIRMAN. About one-third of them that you have—

Mr. WALDRIP. Well, one-third of our cowboys are real cowboys; let's put it that way. [Laughter.]

The CHAIRMAN. Well, I don't feel as badly as I thought I did. [Laughter.]

I guess part of your problem is that they want to come into town every weekend.

Mr. WALDRIP. Part of it. [Laughter.]

If you live way out there, it gets to be a problem.

Mr. MORRISON. Mr. Chairman, that, too, is part of the historic pattern that we were talking about. [Laughter.]

Mr. WALDRIP. Mr. Chairman, I am afraid that some of the cow camps that I am forced to live in wouldn't meet the standards either; but they are only temporary.

The CHAIRMAN. Thank you very much, and we thank all of you for your presentation and your cooperation.

The next panel we have is Mr. Micky George and Mr. Henry Voss, both of California.

Mr. George is a grower from Sultana, Calif.; and Mr. Voss is president of California Farm Bureau Federation.

We welcome both of you, and if you have no objection, we will hear from you first, Mr. George.

STATEMENT OF MICHAEL G. GEORGE, GROWER, SULTANA, CALIF.

Mr. GEORGE. Thank you, Mr. Chairman.

As you have already noted, my name is Micky George.

My family and I operate a farming operation in Sultana, Calif., and are involved in the production and packing and shipping of fresh plums, peaches, nectarines, and grapes.

Through our packing/shipping operation, we also handle produce on a commercial basis for independent growers.

Currently, we ship 25 varieties of plums, 17 varieties of peaches, 27 varieties of nectarines, and 6 varieties of grapes in a season which runs from May to November.

My purpose for offering this testimony is to explain to you the need for a seasonal foreign worker program that works in the dynamic employment conditions found on the production of many perishable crops. While I basically present the testimony as a farmer, I have also been asked to speak on behalf of the Farm Labor Alliance and its members—the California Grape and Tree Fruit League, Nisei Farmers League, California Farm Bureau Federation, Northwest Horticultural Council, Agricultural Producers, Raisin Bargaining Association, Sun Diamond, numerous county farm bureaus, and the Western Growers Association.

These organizations represent growers of perishable crops in California, Arizona, Oregon, and Washington, most of whom face problems similar to those described in my testimony.

My field work year really begins in November, just after the completion of the fall grape harvest, with pruning in preparation for the next year's crop.

This process customarily runs to about mid-February. Beginning in early April, the pace of the work gains momentum with the onset of the thinning season, which has an intensive labor requirement.

Depending on a number of factors, the labor requirement can and does fluctuate, depending on varieties, weather, and cropset.

Timeliness is critical, particularly in the case of the earlier season tree fruit varieties and grapes. In some cases, the labor requirements for grapes reach their annual peak at thinning time.

This period ordinarily runs from early April to mid-June and overlaps with the harvest season which gets underway about mid-May.

The harvest season is the most critical time of the year in terms of our labor requirement. It is not only the period during which my labor needs are usually at an annual peak but also the time of the most fluctuation of need. The crops with which I am involved are amongst the most perishable of all agricultural commodities, and timeliness of harvest is paramount.

~~With many varieties, that timeliness must be reckoned with in terms of hours, or that entire variety may be lost. It is an impossibility to precisely project our labor requirement months in advance because of variables resulting from weather, primarily, but also from a number of physiological factors with the trees and the vines which fluctuate from year to year.~~

Attached to my written testimony is a list of the average man-days per month which were required for our operation last year and for this year to date.

As you will note, our labor needs vary substantially on a month-by-month and year-by-year comparison. ~~The difficulty in predicting year-to-year manpower requirements with precision is apparent.~~

My situation is not extreme. Indeed, because our operation is more diverse than the norm, it allows me to utilize crews in a more stable fashion.

California is the largest single producer of perishable crops, and its production figures illustrate the importance of this industry to California and to the Nation.

The highly seasonal production of fresh fruits, vegetables, and nuts represents over \$6 billion, or 45 percent of the annual sales of agricultural products grown in California.

There are approximately 25,000 farms in California devoted to these crops, producing 45 percent of the total national production of fresh fruits and vegetables.

In addition to the number of perishable crops, there can be scores of varieties for each crop. For example, fresh market commercial peach varieties in our State number over 140; nectarines, over 100; plums, over 125.

Each crop variety has its own cultural requirements, thinning, crop protection, irrigating, girdling, leaf pulling, not to mention harvest; its own harvest schedule and its own requirements for labor are also a factor.

Today, we have an adequate availability of field labor for producing perishable crops. The vast majority are Hispanic workers who come to be employed through a variety of means—farm labor contractors, crew supervisors, labor union hiring halls, State employment services, labor associations, and individually.

There is a functioning network in place that supplies the employees available where needed, ~~when needed, an absolute requirement for perishable crops.~~

Many workers, upon whom western growers of perishables have had to rely, have established work patterns that involve local or regional migration.

This unstructured but highly effective system has provided the necessary manpower to harvest a large number of perishable crops that ripen in rapid succession.

It is not uncommon under stringent harvesting conditions that individual workers may be employed by more than one farmer on a given day.

~~It is a workable approach because it does not depend on the rigid and formal requirements of the H-2 certification process that restricts migration and forces employers to guess when the crops will be ready to harvest.~~

Let me state that I have never used the H-2 program. I do have some familiarity with its workings and based upon that understanding, I am convinced for the following reasons that the H-2 program alone cannot satisfy the seasonal labor requirements of growers of perishable commodities located in Western States.

A, the H-2 program is very rigid, tightly controlled by the Department of Labor and State Employment Services. As a result, in California, where the largest number of foreign workers are employed, no H-2 workers are used in agricultural fields, and only a few hundred are used in livestock operations.

B, the H-2 certification process is not timely, places unreasonable demands and obligations on employees, and is not adaptable to rapidly changing conditions.

As I have described, it is futile for me to estimate my labor requirements some 50 to 80 days in advance of my needs, because of all the variables involved.

Moreover, there is a shortage of domestic workers available who are qualified and willing to work in perishable commodities.

It has also been my experience that those domestic workers who commit themselves to work during a harvest often just don't remain through to its completion.

Under H-2 certification, an employee can work only for that employer that he or she is contractually tied to.

There is no freedom to change employers, to quit, or to follow crops unless prearranged under contract.

The implications of being locked in a dynamic work environment are immense for both employer and employees involved in perishable commodities.

C, the substantial increase in H-2 petitions would prevent the Department of Labor from making timely H-2 eligibility determinations.

Assuming even a conservative estimate of migrant workers would be needed in California to produce perishable crops, and would have to be obtained through the H-2 certification procedure, it is clear that the DOL would have extreme difficulty in handling this surge in certification and requests.

We wish that the proposed legislation would solve our labor needs by providing the necessary number of domestic workers.

Despite our hopes we are fearful that this will not occur; and we must look at the available alternatives. I am sure that I speak for all agricultural employers when I say that the H-2 program should be continued for those who can effectively utilize its provisions.

Improvements have been made in the program as a result of H.R. 1510 and S. 529.

Additional corrections are sought, however, because H-2 will not work for most growers of perishable commodities.

It is essential to provide a committee amendment that addresses the very real problems of many producers of perishable crops. Such an amendment would not be a replacement of the regular H-2 program, but would authorize a narrower complementary program available only to producers of perishable commodities.

Some of the principles that should be included in the foreign seasonal worker program are:

One, a new nonimmigrant visa category to be established for an alien coming into the United States to perform only agricultural labor, but limited to the production of perishable commodities.

Two, employers that want to participate in the program would submit an application to the Attorney General specifying the number of aliens needed and the type of work to be performed.

Based on the applications, historical employment patterns, and availability of domestic agricultural workers, the Attorney General would establish monthly and annual numerical limitations.

Three, seasonal foreign agricultural workers would not have to obtain a petition from any prospective employer in the United States in order to obtain a nonimmigrant visa under the program, or be limited from working for any eligible agricultural employer within the region established by the Attorney General.

These would be the operative features of the amendment. The balance of the provision would be control mechanisms to insure the protection of employees, both foreign and domestic, employers and the public interest.

Employers would be required to make a good-faith effort to recruit willing and qualified domestic agricultural workers in the area of intended employment.

Employers not recognized as eligible would incur substantial civil penalties if they are found to hire workers admitted under the program.

Employees under the program would be encouraged to return home by the payment to them of an amount equivalent to the social security payroll tax applicable to those employees.

Concerns centering on any temporary worker program are:

One, allowing only the number of needed workers into the country;

Two, insuring that the domestic workers are not displaced;

Three, providing control of employers to assure there is no discrimination or abuse of workers;

Four, providing control of employees so that they are employed and work only for eligible employers; and

Five, insure return to home country after the expiration of visa.

I believe that all of these requirements could be satisfied in the amendment that we suggest, while also providing for the needed flexibility to assure the availability of seasonal foreign workers where needed, when needed, in the production of perishable commodities.

Mr. Chairman, we appreciate the opportunity to present our views and recommendations to this committee; and I ask your careful consideration of this testimony and adoption of the amendment respectfully requested.

Also, Mr. Chairman, I ask to have attached as an addendum to my written testimony a narrative of the representative case of the timeliness and the flexibility required and a particular variety of peaches which I experienced in 1981, which graphically illustrates the narrow timeframes that we are concerned with.

The CHAIRMAN. Thank you very much, Mr. George.

Your statement and the addendum will appear in the record without objection.

[The prepared statement of Mr. George appears at the conclusion of the hearing.]

The CHAIRMAN. Mr. Voss.

STATEMENT OF HENRY J. VOSS, PRESIDENT, CALIFORNIA FARM BUREAU FEDERATION

Mr. Voss. Yes. I would like to thank you, Mr. Chairman, for giving us this opportunity today to express some of our concerns with H.R. 1510 as it is presently before the House, and ask your indulgence in listening to some of the areas that we think need to be addressed and, hopefully, that you and your committee will see fit to do so.

I am here today representing the California Farm Bureau Federation, the State's largest farm organization, and the Farm Labor Alliance, an affiliation of farm employer groups formed recently to represent the West in these immigration proceedings.

I personally am a farmer and a farm employer. Our family farm production consists of peaches, grapes, almonds, melons, tomatoes, and other vegetable crops. Most require considerable labor for cultivation and harvesting.

California is widely recognized for its role in producing fruits and vegetables, representing about 45 percent of the Nation's production. We are proud of that accomplishment, but what is more significant about the figure is our critical reliance on an adequate and timely labor force to harvest these perishable crops.

~~When our crops tell us they are ready, we can't wait and consumers nationwide rely on us to accomplish that task.~~

Clearly, the No. 1 concern facing our industry today is obtaining a version of current immigration reform legislation which is workable.

If there is one message that I would like to convey today, it is that we are deeply worried that the current proposals contained in section 101 will not meet our labor needs. The H-2 program which has been used on the east coast will not work in California, since our harvest and employment patterns are very different.

We recognize that it has been a good program for those using it, and we urge its continuation for those purposes. But even with the modifications proposed in the Simpson and Mazzoli bills, we believe the plan will result in hardships for our farmers and farmworkers alike.

Our farm production is the beginning point for hundreds of thousands of other jobs in packinghouses, transportation, and marketing.

Unless we can devise a flexible system that recognizes our conditions the harvesting of highly seasonal labor-intensive crops in California and the rest of the Nation will be jeopardized. Certainly, a 50- or an 80-day notification period will not work. Worker contracts that are specific to an employer or an employer group and site will not work.

Many of our crops have a short but highly critical harvest period. A cherry grower will often harvest his entire crop in a week or 10 days. The same is true for apricots, pears, olives, and many other crops.

Most of our raisin grapes are cut and laid on trays for drying during an intensive 2-week harvest period in early September.

Our farm labor force during the peak harvest period is made up of truly migratory workers who follow the various crops as they mature in one area of the State after another.

Table grapes are now being harvested in the desert region of the Coachella Valley. Soon the harvest will move north to the San Joaquin Valley as the season progresses. Melons, tomatoes, wine grapes, and many other crops follow the same pattern.

While the sequence is predictable, the exact harvest dates can change quickly. Valley temperatures can soar to 110 degrees, speeding the harvest. Likewise, the threat of early fall rains places a heavy demand on the available work force.

Our present farm labor system, despite its many flaws, works because the farmworkers are free to move from one area to another, from one employer to another. Any worker shortages that develop are generally corrected within a few days' time. The system works because it is unencumbered.

It is obvious then, I think, why we are troubled by the features of the H-2 program, which even if modified as proposed, would still require advance notification and certification of labor needs, exhaustion of all efforts to hire domestic workers, and a specific contract between employer and employee, including travel and housing arrangements.

These are all paperwork and bureaucratic procedures that consume valuable time. It is no exaggeration to say that most of us would be waiting for clearance from Washington long after our crops had rotted in the fields.

Let me cite a more specific example of the kind of problem that can occur. Recently a Fresno County boysenberry grower started his 2-week harvest. Because of a 2-week heat wave in May, the harvest began on June 1, rather than the normal June 10, starting date.

There is no way under the H-2 concept that the employer would have been able to adequately gauge and adjust his labor requirements to compensate for the whim of nature. Without a readily available work force, the crop would have been lost.

A migratory farmworker may travel the length of our State during the course of the harvest season. He may work for 5, 10, or 15 or even more employers and work with just as many different crops.

If you examine the elements of our current system, the vast number of employers, a huge mobile work force, dozens of crops, throughout the State in various stages of harvest, it is hard to imagine that workers are available when needed. And yet it works, and the reason it works is because of its flexibility.

The opportunity for an individual to earn \$150 a day picking cherries will temporarily draw workers from another job such as weeding that lacks the urgency. The labor marketplace has its own supply and demand functions.

The migratory worker faces just as difficult a problem. The average seasonal worker is employed $4\frac{1}{2}$ months per year. He depends upon his mobility to seek out the best available work. If he fails to earn enough money or doesn't like to work with a certain crop or

employer, he is free to move on. He must make the most of his opportunities. He can't wait.

I have talked about the problem. Now, let me offer some possible solutions. We are not asking for the abolition of the H-2 program. Instead, we are requesting an amendment to H.R. 1510 that would provide for a strictly controlled nonimmigrant seasonal foreign worker program which would supplement the H-2 program.

Admittance of seasonal workers would be subject to the approval and control by the U.S. Attorney General with a guarantee that they would return to their homelands after a limited stay in this country.

But, unlike the current H-2 program, such workers would be free to migrate from employer to employer in response to the ever-changing harvest needs.

In short, we are seeking flexibility not contained in the current legislation. We can't live with the current notification requirement, and we know from experience that we cannot rely on local employment development offices to supply domestic workers.

We know, too, that the Government Employment Offices have just as much difficulty determining the legal status of workers as we do. For these reasons we are concerned with penalties that will be imposed upon employers.

We are all in agreement that steps must be taken to deal with the immigration program. But let's go about it correctly. For most California farmers, it may be a question of survival.

We seek your help toward developing a workable program which will adequately provide for our labor needs.

I thank you for this opportunity.

[The prepared statement of Mr. Voss appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, both.

Are there any questions?

Mr. Coelho.

Mr. COELHO. Thank you, Mr. Chairman.

I just want to thank the panelists for appearing. They both are from my area, and Mr. George is just outside of my district; Mr. Voss happens to live in my district, and we are very proud of the job he is doing as president of the California Farm Bureau.

I just want to state for the record that the concerns that they have expressed here, Mr. Chairman, are concerns that are not only theirs but those of many growers throughout the San Joaquin Valley, and Sacramento Valley as well.

The concerns of perishable agriculture are very real indeed, and in many respects much different than those of the rest of agriculture.

Many of us from California want to make sure that the unique problems of perishable agriculture are properly addressed in any immigration bill that would go through.

You imply, Mr. George and Mr. Voss, that perishable agriculture is different from the rest of agriculture. You imply that precisely because certain crops are so highly perishable, you need more flexibility in hiring a harvest work force. What would happen if you don't have the flexibility that is needed for perishable agriculture?

What would happen if we had to go through the H-2 program and comply with all the time delays and so forth?

Are you pretty much saying that we would not have the labor to do it, and we would then have to get out of those crops?

What would happen to those growers if we did?

Mr. VOSS. I believe from our present experiences and knowledge of the domestic labor force, that we wouldn't have the labor; it would be a risk that most of us wouldn't be willing to take.

And we would over a short period of time move out of many of the perishable crops.

Mr. COELHO. What crops would you go into?

Mr. VOSS. Well, I think if there are opportunities that we would go back into more machine-type crops, whether they be in the grain crops, some of the forage crops, things of this nature rather than take the risk.

Or in some of the cases where we have already a surplus of the nut crops that are machine-harvested and use very little labor, which create another set of problems for another segment of the industry.

Mr. COELHO. Mr. George, one of the things that is alleged by many people is that there are plenty of domestic workers available to do this type of work, and that you don't need a special program in order to do this type of farmwork.

Can you give us any examples of where there have been attempts on the part of you and the other growers to try to find these domestic workers that are supposedly out there to work?

Mr. GEORGE. I have had those experiences, Congressman. Probably, one of the better publicized instances was a situation that occurred in Orange County last year that got a good deal of press, in which the INS concentrated very heavily on an Orange County strawberry grower.

The EDD, the Employment Service in the State of California, intensively recruited and referred to those strawberry growers domestic people. I can't recall the exact numbers, but it was a total failure. That strawberry crop was, for all practical purposes, lost.

Many of the—most of those people referred failed to complete one day's work. And most of the rest who returned failed to complete 2 days' work. It was a total failure.

The same thing happened in Fresno County—

Mr. COELHO. On this one crop that you are talking about, was that highly publicized so that if there were workers around, they would know about it?

Mr. GEORGE. It had a good deal of press, in California, at least.

The same similar situations have happened in the raisin industry, in Fresno County.

Mr. COELHO. One other thing I am interested in is the size of your perishable commodity. Some of my colleagues from this committee, from other parts of the country, always talk about the large farms that we have in California.

I think that some of them are surprised to know the number of crops that we have, but I try to educate as to the size of our farms as well.

Do you have a rough idea of the size, the average size, of our operations in these perishable commodities? Mr. George or Mr. Voss, either one of you, do you know?

Mr. GEORGE. A couple of statistics are that the average size, perishable commodity operation averages between 80 and 200 acres in our State.

In my irrigation district, which is the Alta Irrigation District that you are familiar with, the average size farm is 32 acres.

Those are acres and operations—acreages and operations devoted primarily to highly perishable commodities.

Mr. COELHO. Mr. Voss, do you have any—

Mr. Voss. I think that is a pretty close figure, somewhere between 35 to 40 acres in most of our fruit and berry-type crops that we experience in the California Farm Bureau Federation.

We have a few large farms in the State. We hear a lot about those, but the bulk of the farming is done by small family-owned and operated operations still.

Mr. COELHO. Between 30 and 40 acres, somewhere in there?

Mr. Voss. Yes.

Mr. COELHO. No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Morrison.

Mr. MORRISON. Thank you, Mr. Chairman.

Mr. Voss, just as a follow-up on the last question about size, do you feel that you have been able to maintain that small family-size farm which this committee always seems to be seeking to support, because of the availability of seasonal workers?

Mr. Voss. Yes, I think, because of the flexibility that we have had of a labor force that is able to work for, in many cases, for several neighbors in the same general vicinity, and they return here year after year, that those people continue to exist in business, because there is a relationship between them and their individual employee.

Mr. MORRISON. Thank you.

Mr. George, you listed in your testimony some of the basic concepts involved in an amendment that was being prepared. I wanted to make inquiry about that amendment. Is that ready for the committee to consider, or will it be available?

Mr. Voss. Yes, sir, we are currently working with members of the committee to develop that language. That language has not been developed in its final form, but will be forthcoming shortly. It provides sort of the dual track approach that we have talked about earlier.

Mr. GEORGE. Yes, sir. That is correct.

Mr. MORRISON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Stenholm.

[No response.]

The CHAIRMAN. Mr. George, let me ask you one question. I do this so our record may be complete for the members who will be working on it, for two reasons.

Are you more of a grape grower for yourself than for other people that you mentioned in your statement?

Mr. GEORGE. That is correct.

The CHAIRMAN. Is that table grape?

Mr. GEORGE. Primarily table grapes. That is correct, sir.

The CHAIRMAN. Now, if I lived in Watts, let's say, in Los Angeles, and I came out to your farm, and I had never seen a vineyard before, could I just jump in and do the job?

Mr. GEORGE. We have a percentage of people on our own operation every year that are newcomers to perishable crop field work, and we make an effort, and successfully are able to train people to perform most of those functions, yes.

The CHAIRMAN. Now, could that be done in one season?

Mr. GEORGE. That can be done in one season. For us to have to retrain an entire work force annually would be a burden.

The CHAIRMAN. During my visit to the fields in California, and I visited at the start of the season last year in the Coachella Valley, I realized there is no way I could pack one of those boxes like those people did.

Mr. GEORGE. Definitely, to be sure, certain operations in perishable field work, perishable commodity field work that requires specialized talents, and when we get down to talking about things like field packing, your point is accurate. Those are things that require much more intensive training.

The CHAIRMAN. Also, now, this is hard work, and it is not the cleanest work around. It is hard, and it is dusty, I would call it a skilled work as working in a factory in Detroit or some other place in Michigan.

Would you agree with that?

Mr. GEORGE. Not in all instances. I think that there are a number of jobs—the field packing operation, the field packing process that you mentioned is one example requiring a high level of expertise. Pruning is another example requiring a high level of expertise; something more than rudimentary training for color-picking process on some vegetables and some varieties of tree fruit also requires some learned skills.

The CHAIRMAN. So, then, you could split, in fact, your work force? What I'm trying to get at is: Are there readily available either U.S. citizens or resident aliens that can do the one, or do you need them for both?

Mr. GEORGE. Yes, sir, the common process is that in our operation that we try to maintain enough flexibility among our crews so that we can do both the highly skilled operations as well as others.

Some crews are more adept at the more highly skilled operations and on those occasions we try to channel those crews in those directions.

The CHAIRMAN. You are an expert witness here because of your background. When would be the last of the grapes?

Mr. GEORGE. The last of the grapes would—they begin in Coachella in May, and the last of the grapes would finish up about the end of October.

The CHAIRMAN. How much would a person make under the wages being paid today in that period of time, for one who would work—you start way earlier there, 5 o'clock in the morning, or 6 o'clock in the morning until whatever—what would a person make normally for that period of time?

Mr. GEORGE. As a packer?

The CHAIRMAN. No, just the one that picks the grapes?

Mr. GEORGE. I would say approximately \$14,000, I guess.

The CHAIRMAN. In 3 months?

Mr. GEORGE. No, that is more than that.

The CHAIRMAN. Four months.

And how much would the packer make?

Mr. GEORGE. Just on a percentage, I would calculate perhaps \$18,000.

The CHAIRMAN. For 4 months?

Mr. GEORGE. Approximately 5 months, yes.

The CHAIRMAN. Five months.

Thank you very much.

We thank both of you for your presence and your contribution.

The next panel is made up of Mr. Arnold Torres, League of United Latin American Citizens, and Ms. Antonia Hernandez, Mexican-American Legal Defense Education Fund.

We will invite both of you to come to the witness table at this time.

We welcome both of you.

**STATEMENT OF ANTONIA HERNANDEZ, ASSOCIATE COUNSEL,
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND**

Ms. HERNANDEZ. Thank you very much, Mr. Chairman.

I would like to thank you for giving us the opportunity to testify here today.

I submit my written statement for the record, and what I will attempt to do right now is to summarize what is in that written statement.

The CHAIRMAN. Without objection, as it has been previously granted, your full statement will appear in the record.

Ms. HERNANDEZ. Thank you.

[The prepared statement of Ms. Hernandez appears at the conclusion of the hearing.]

Ms. HERNANDEZ. Today, I would like to address three provisions of H.R. 1510 as reported out by the Judiciary Committee.

The first provision is the employer sanction provision; second, the legalization; and third, the H-2 transitional guest worker program.

Our organization opposes any legislation that contains an employer sanction provision. Our reasons for the opposition are that employer sanctions will be ineffective, unworkable, expensive, and, most importantly, for our community—for the Hispanic community—they will be discriminatory.

Now, many say that the institution of a verifiable system of identification will remove the potential for discrimination.

It is our belief that that system will exacerbate the problem and will not eliminate or minimize the problem of discrimination.

What do we mean by that? We feel that employer sanctions as a concept is not a troubling concept. It is illegal to hire undocumented workers. The problem is with the implementation.

What we are dealing with today in this society in America is with stereotypes and misconceptions; and that is, that all undocu-

mented workers or a majority of undocumented workers in this country are Mexican, or come from Latin America.

Therefore, what is happening, or will happen is that we Hispanic Americans, particularly in the Southwest, will become a suspect group of individuals.

We have experienced in the last 2 years some problems to give us an indication of what will happen. What has been happening is that we as Hispanics are suspect. When we go in for employment, when we present our documents, those documents are suspect documents.

The question is, Well, how do I know that they are not fraudulent documents since we all know that those documents can be easily purchased on the open market.

With—and so that the problem—so that it is not one of just saying, employers want to violate the law; it is a problem of the fact that business people are put in a position of being told that they must abide by a law that cannot be enforced, and that it is very difficult to implement.

On the one hand, they are being told that it is illegal to hire undocumented workers; on the other hand, they are being told that they must verify documents.

If I were an employer, I would reasonably want to minimize my risk. I would not want to hire people who put me in the potential of having the Federal Government come in and investigate my employees, disrupt my work, and the working of my company.

So, the only way to do that is not to hire individuals who might be undocumented.

Now, one of the arguments that we hear over and constantly is that our present Civil Rights laws protect and will protect Hispanics; and this is very much not the truth.

Anyone that is knowledgeable with our present Civil Rights laws knows that Hispanics are not effectively covered now and that the employer sanction provision, if passed, would not cover Hispanics.

And let me give you an example.

Title VII which is our major discrimination law right now does not cover a large portion of the population. In order to be covered by title VII, you have to be an employer that hires 15 or more employees and hires them for 20 weeks or more. It is a very well-established fact that Hispanics tend to work for small employers.

Therefore, even presently under the law, a lot of Hispanics are not covered by title VII.

Second, alienage is not covered by title VII. What do I mean by that is that if I am a legal resident alien but not a citizen, an employer can choose to hire a citizen over a resident alien.

It is also well known that a large portion of our community is in that category.

Third, there are exemptions to title VII, such as that employers can formulate and implement reasonable rules in the workplace.

One of those rules that has been upheld by some courts is the English language requirement rule, which means that you must speak English at the job.

Well, that once again eliminates a large portion of our community.

The reason I am making these points is to show that if employer sanctions passes, and, knowing that it will be discriminatory, and amendments are not put into the bill, to protect and to cover the potential for discrimination, we are going to exacerbate an already very serious problem in our community.

We are dealing with the basic survival need of employment; and that is something that we all are reaching to strive and particularly in our community.

Second, legalization, and this ties in with the H-2 guest worker program.

As you know, as it applies to this committee, the legalization program, as reported out by the Judiciary Committee, puts in a 5-year prohibition for eligibility for any Federal program that an individual might apply for, and that includes food stamps. We are very much opposed to that prohibition for several reasons.

In my testimony, I fully document the fact that most studies substantiate the fact that undocumented workers have been an economic asset to this society, that this Government has been and continues to make money out of these undocumented workers.

If the goal of legalization is to clean the slate, to bring these people into the mainstream of society, then you don't create a subclass by making them ineligible for programs that they contribute to through their tax dollars.

We think it is unfair; we think it is unnecessary, and it will not accomplish the goal of assimilation in bringing these people into the mainstream of society.

And, finally, the H-2 guest worker program—and I guess I will be in a minority here.

We are opposed to any extension of the H-2 guest worker program. And basically our position is very simple. This Congress, this Government, and this society can't have it both ways.

On the one hand, they are saying that we are being inundated by hordes of people taking jobs from American workers, and that these people are displacing American workers.

And then, on the other hand, they are saying that we have in a particular industry, relied solely on these highly skilled hard-working individuals who do this type of work.

If that is the case, then we want it to be acknowledged that these people contribute, that they are hard-working individuals, and bring them into the mainstream with full rights and protections.

If, in fact, there is a concern that the employer sanctions will dry up the pool of undocumented labor, then why not extend the legalization program to bring in those people already here, instead of as in the House bill creating a potential pool of new people coming in from Mexico.

It just doesn't make sense.

There has been testimony, and I personally talk about California. I am from California. I was a migrant worker. I know the field, and I know the stream.

Talk about peaches? I can pick peaches. It is a skill, but it is a skill that can be learned, and if we want to give first choice to citizens and residents, and want to make those jobs attractive to these unemployed people, then I think that we can do that.

I don't think it is in our interest to continue the flow of undocumented labor when we need it. It is not a spigot; we can't turn it on for some instances and off for others.

If we seriously want to address the undocumented flow, then we are going to have to establish uniform policies to stop the flow at the border.

The problem is when you attempt to control the flow internally, and that is where the impact of the Hispanic community, or any other community that shares the linguistic or physical characteristics to those associated with the undocumented population that we have the problems.

I don't want to take any more time of the committee. I would entertain any questions that the members may have.

Thank you.

The CHAIRMAN. Thank you.

Mr. Torres.

**STATEMENT OF ARNOLDO S. TORRES, NATIONAL EXECUTIVE
DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS**

Mr. TORRES. Mr. Chairman, my name is Arnolando Torres. I am the national executive director for the League of United Latin American Citizens, the country's oldest and largest Hispanic organization.

I would very much like to indicate our deepest appreciation to the chairman and to the members of this committee for holding this hearing on the three areas that Ms. Hernandez has identified—the sanctions provision, the H-2/transitional program, and the legalization provisions with regard to the prohibition on the food stamps.

We are very eager to present our views, and so we will begin by discussing very briefly our views on the major objections that we have to the legislation.

I believe that the article—the editorial that we had published yesterday in the LA Times, which staff has circulated, really indicates the position of the League with regard to this bill.

It is not the run-of-the-mill pieces that deal with sanctions, that deal with H-2, and that deal with legalization. It is one that addresses the fundamental problems as to why people are continually coming to the United States and the fact that this legislation is an extremely shortsighted attempt to address those significant difficulties.

I think that the concerns that have been raised with regard to sanctions have been very well laid out by Ms. Hernandez. There is very little that we can add to it, except to say that we have always believed that a very reasonable alternative to the sanctions idea is the enforcement of the labor laws; and contrary to the presentations that have been made today by the very able representatives of the Department of Labor and the INS, it is important to understand—and we have indicated in an article that we xeroxed from Time magazine that contrary to the contention that labor violations did not take place in the minimum wage laws, with regards to the hiring of undocumented, there is records, and a quote from this article that in the past 3 years, California State investigators

have inspected 2,835 Los Angeles restaurants and have found that 65 percent of them were breaking wage laws.

In most of these situations there was the hiring of undocumented workers; so, contrary to the statements made by DOL representatives there is a significant amount of workers out there that are undocumented and that are not being paid the minimum wage.

Our next comments would like to focus on what we regard as a reasonable amendment to address the problems of discrimination should sanctions and should this bill be accepted by the Congress in the coming months.

We regard the sanctions provisions as being highly discriminatory, and there is a significant lack of redress.

There is an amendment that was introduced in the Senate. It was unfortunately defeated but we hope that there is ample time now for the Members of the House to look at the amendment that Senator Hart and Senator Levin from Michigan—Colorado and Michigan—introduced in the Senate. We would hope that the House would have enough time to look at that amendment and support it on the floor when the bill goes to the floor for floor action.

Our next area of concern deals with the H-2 transitional program. Our testimony in this area deals with a very long history of the temporary worker programs in the United States.

Since 1917, we have had some form, either formal or informal, of a temporary guest worker program. It was developed by the U.S. Department of Labor back in 1917, which, in essence, gave the Secretary of Labor discretion to admit temporary importation of Mexican contract laborers.

As we indicate, prior to 1917, this demand had been met by other immigrant groups, and it was not to be hindered by such sentiments, which between 1900 and 1917, there were very strong immigration sentiments voiced by this country.

The appetite for cheap labor that the agricultural industry had at that time satisfactorily fed by the initiation of this bracero program.

In essence, the Secretary of Labor was allowed to exempt Mexicans from the head tax required of each immigrant and the ban on the immigrants over age 16 who could not read. These workers were primarily employed in the agricultural labor area.

The program was justified at that time as being in the interest of national defense and should have been terminated after World War I.

However, the program continued until 1922, and after employers could no longer justify it as a national defense policy, it was terminated.

During its existence, 76,862 Mexicans were recorded as entering the country, while only 34,922 were recorded as returning to Mexico.

It is important to indicate that statistic and to pay a great deal of attention to it, because contrary to the contentions that other people have made, with regard to temporary guest worker program, if anything, it feeds the flow of further undocumented populations to the United States.

Another very interesting statistic or fact is that this program was again developed and was continued from 1922 to 1951 without regulations, until 1951—it was kind of a very informal basis.

It once again got started up by Congress, but was finally terminated back in 1964.

In 1911, the Dillingham Commission indicated, and described Mexicans as being undesirable as settlers because of our—I quote: “Indian-like characteristics, our low level of skill,” the view that we are illiterate; but if you wanted Mexicans to work for cheap, the door appeared to be wide open formally or informally, and you didn’t have to worry about their rights.

Basically, that was the finding and the sentiment that the Dillingham Commission indicated in their report in 1911. It is also interesting to cite the excerpts from the staff report of the U.S. Commission on Immigration and Refugee Policy.

We quote:

In his discussion of the World War I program, historian Otey Scruggs summarized its shortcomings as follows:

“The basic weakness of the program was lack of adequate enforcement machinery. Too much reliance was placed on the good faith of the parties involved.”

I repeat that phrase: “Too much reliance was placed on the good faith of the parties involved.”

Quote again:

In the case of the farmers, most of them were haunted by the fear of labor shortage, and who had come to regard the use of Mexican labor as a natural right—

And I quote again:

And who had come to regard the use of Mexican labor as a natural right, an appeal to good faith plainly was chimerical. It was equally absurd to have expected workers who came with the thought of leaving the farm for the factory . . . to have scrupulously honored the terms of their contract with the growers. Since good faith alone was insufficient, a more compelling agency was needed to enforce the meager sanctions contained in the Secretary’s orders. Those orders had directed the Bureau of Immigration, with the assistance of the Employment Service, to make periodic investigations. But this proved to be impractical, for the Bureau simply did not have a border force large enough to take on the added responsibility.

Excerpts indicate that:

A dramatic increase in Mexican migration followed the institute of the 1917 program. By the 1920’s, Mexican immigration, legal and illegal, had reached an unprecedented level, increasing from 221,915 in 1910 to 484,418 in 1920 and 890,746 in 1926.

In 1942, when the program once again was enacted, they employed “between 4 and 5 million Mexican agricultural workers over a period of 22 years, the bracero program rose out of the World War II labor shortage.”

This goes on and on, but the last statistic is very interesting that: “During the 22-year history of the program, 4.5 million workers came in as braceros, but 5 million were apprehended as illegal immigrants.”

It simply indicates very clearly, gentlemen of this committee, that an H-2 program, whether we have it in the bill as it is now, or whether we have a much more reasonable program, or whether we have a transitional program, we will nonetheless be feeding the flows of undocumented people, which in fact we had thought the purpose of this bill was to try to hinder and to stop.

The important thing also is that the transitional provisions of this bill indicate that it is for the purposes—to quote:

Assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of eligible individuals.

As we indicate in our testimony, this “shift” has been going on since 1917. This shift has been going on since we instituted these programs of temporary guest worker program.

It is very conceivable that in 5 years we will be dealing with the legislation that will be asking for another phase-out program of temporary guest worker programs, because we need to rely more on American citizens who unfortunately are unemployed as a result of that situation.

But perhaps much more frustrating and offensive to this organization, which I represent is the fact that we are talking about bringing in new workers when we cannot even take care of America’s farm workers that we presently have in this country.

The statistics and the profiles of American farm workers are absolutely disgusting. The fact that we as a country would have and treat one of the most important workers in American society the way that we have over the many decades, it is very, very difficult to have any respect for the institutions of this country, to allow these conditions to continue.

Yet we are saying that we are going to throw on top of American farm workers yet more workers from foreign countries who do not stand much of a chance of having their rights protected.

For the purpose of digesting some other information that we think it is important for members of the Texas Delegation who are members of this committee, the Governor of Texas, Mark White, did commission a Commission on Immigration—excuse me, a Task Force on Immigration.

I would quote for you statements that have been made by witnesses at a Brownsville hearing, a Mr. Juan Guera from the Texas Employment Commission.

My principal concern that with each additional nonemployment related requirement placed upon the Texas Employment Commission, we are further diluting our job placement services. Given the unemployment rate in Cameron County, the expansion of the H-2 program would mean a disaster to the unemployed. In this area we have experienced a decline of 25 percent in the listing of job openings and a decline of 80 percent of our out-of-State job listings.

Mr. Charles Hernandez from the U.S. Department of Labor, quote:

In our investigations in the area, we have found a substantial number of minimum wage and other violations. In Brownsville, I am the only investigator.

Russell Taturo, a concerned citizen from San Antonio:

The economic conditions in the Valley—and this is South Texas, the Rio Grande Valley—are deplorable and illegal immigration makes matters worse. We are not being—but I do not blame the illegals for coming.

We quote from a petition that was submitted to the commission’s hearings in Brownsville from a group of concerned citizens from Donna, Tex.; from McCallum; from Alamo; from Mission; from San Juan; from Progresso.

They indicate their opposition to the H-2 expansion and transitional programs, and have attached xeroxed copies of newspaper articles that have appeared in the El Paso Times, which quote:

Farm Hands Claim Jobs Denied Them. A group of farm workers from the Rio Grande Valley filed a complaint to the Federal Department of Labor, Wage and Hour Division in El Paso charging the Presidio farmers deny them jobs that went to Mexican laborers who will work for substandard wages.

It is interesting that the Labor Department and the INS today indicated to this committee that it was the policy of the INS that when they get someone who is illegal, that before and prior to their deportation, they make sure that they get back wages.

Quote:

The Labor Department currently has a Federal suit pending against five farmers in the Presidio area charging them with failure to pay minimum wages to pickers, most of whom are "undocumented workers" or Mexican nationals seeking recovery of \$230,000 in back wages.

I think that this is a serious, serious report on the part of this reporter, because it seriously questions the authenticity and the accuracy of the statement of the representative of the INS.

Another article that appeared in the El Paso Times indicates that, in a ruling permitting importation of Mexican labor for Presidio harvest, U.S. District Judge William Sessions ruled: "All workers, American and Mexican should receive \$2.90 an hour, \$5 a day for housing, and 5 cents a mile and travel expenses up to a maximum up to \$35."

Yet, workers claim the farmers have only been paying the usual minimum wage, \$2.65, and they say they have yet to see a penny of housing or travel money.

It goes on to indicate that the legal showdown seems to be between local authorities, like Acosta, who is the judge in the area, and sheriff officers who protect the legal rights of growers. And the Federal Department of Labor and the Federal Courts who protect the workers.

However, it is important to understand the next statement:

"But in the fields of Presidio County, the Feds are far away."

Members of this committee, I think that this information—and if you would like more, we could certainly give more of it to you—very clearly indicates that there is significant abuse out there of H-2 workers and of America's farm workers.

To discuss expansion of H-2 is very difficult for this Hispanic organization to have anything to do with that type of discussion.

We would very much like to see the H-2 provisions that exist now, not altered whatsoever, in final action by the House. In fact, we have serious disagreements with the provisions that are contained in the bill, as it stands now.

We do not wish to incriminate all growers, because we do not believe all growers are abusive and exploitive of people, or workers.

But, clearly, with the history that I have just outlined to you, it is very difficult, and I would hope that you could understand our reservations and our apprehensions about the expansion of any H-2 program at the present time.

Lastly—and I ask for the indulgence of the committee—are the concerns about legalization.

It is an extremely fascinating experience to sit and listen to proponents of the legislation and to articles written by outstanding scholars and academicians in newspapers throughout the country, that indicate that the undocumented are significantly displacing America's workers at a very high rate.

The information that I indicated to you deals specifically in the area of agriculture. However, it is very interesting to say that the undocumented are taking a great deal of jobs and at the same time creating significant welfare problems for local counties, State, and Federal Government.

It is very difficult to expect someone who is working full time at \$9 an hour to also be on welfare at the same time.

But, yet, that is the view that most people would give you if legalization comes about. It has also been indicated by the administration, the Congressional Budget Office, that there is a significant cost associated with the legalization program.

We simply came out with some statistics based on INS, facts of apprehension that indicated that \$4.81 an hour was the average wage that an undocumented person received during Operation Jobs and we simply gave 20 percent as earning \$9 an hour.

Based on those statistics, if 80 percent of the undocumented workers were at 6 million, earned \$4.81 an hour, they would pay \$8,517,792,000 in FICA and withholding taxes.

The 20 percent that earned that \$9 would end up paying \$5,173 million in FICA and withholding taxes. But very few people ever talk about the contributions that the undocumented are making, if in fact they are working.

The provision in this bill that denies the undocumented person who ceased to legalize his or her status food stamps for a 5-year period is, in our opinion, a provision that seriously pushes a sub-class status in this country.

If an undocumented person has been in this country for 10 years, has worked those 10 years, has paid their taxes, owns property, has developed significant and established significant equities in this country; that person should be allowed to claim the benefits that that individual has paid into funds for. The restriction, in our opinion, is a serious difficulty that we would hope this committee in its markup if it should have a markup would either repeal or would provide for the following:

That should a person in a legalization program become unemployed during the 5-year period, that that person should be allowed to apply for food stamps under those conditions.

We would hope that that would be an amendment that this committee would seriously consider if, in fact, as I indicated it decides to mark up a version of its own on the Immigration bill.

Lastly, the accompanying document that I submitted was a study done by Mr. Robert Warren and Mr. Jeffrey Passel of the U.S. Bureau of the Census. It clearly indicates that contrary to the exaggerated wild guess of some 2 to 12 million, or some 25 million undocumented people in this country, that there is, in fact, no more than 4 million with a probable total number being even less.

They base these statistics on an estimate of the total number of aliens included in the 1980 census and an estimate of the total

number of aliens residing in the country legally, derived primarily from Immigration and Naturalization Service data.

So, contrary to the statistics that people would have us and have you, as Members of the Congress believe, there are not the 2 to 12 or the 25 million people that everyone is saying are undocumented.

The statistic and the figure that they give is that there are at least 2,047,000 illegal aliens. Of these, 931,000 are illegal or undocumented workers born in Mexico.

So, I think these statistics are very important to consider when we are looking at the legalization provisions and the consequences and the cost of such a program, which we hope will come about but not in its present form.

Thank you very much, and I very much appreciate the fact that you have allowed me to speak more than the 5 minutes.

[The prepared statement of Mr. Torres appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much.

Any questions?

Mr. Coelho.

Mr. COELHO. Mr. Chairman. I want to compliment Ms. Hernandez on her statement, and I want you to know that as one individual, I totally agree with you in regards to the discriminatory factor in employer sanctions.

I don't think that the legislation in either the House or the Senate side provides the protection that is necessary for minorities, including people of Mexican descent or Portuguese descent or any other Latin descent, people who have certain physical characteristics, and about whom certain people have automatic prejudicial reactions. They must be protected. I support you in that, and intend to follow through with that support.

I do want to disagree with you, as you might expect, on some of your comments regarding agriculture.

I think the one thing that was not brought out in the statements made by you or Mr. Torres is that of the illegal aliens that are in this country—and I appreciate your references to restaurant and hotel workers, which I thought were much more appropriate than Arnold's, as he concentrated almost exclusively on agriculture—the largest employer of illegal aliens today is the restaurant hotel trade, which is by far over and above anything that agriculture employs or considers employing. I also think that your references to the fact that we need to do something about labor law enforcement, are right on target, and I totally agree with you that something needs to be done there.

But I think we are going to need to keep things in perspective. According to most studies, 85 percent of the illegal aliens work in something other than agriculture; and that is generally recognized across the board, regardless of your position on this issue.

There is a tendency on the part of some folks to call attention to the employment of illegal aliens in agriculture but, for some reason, what goes on in other parts of American industry in downgraded or even ignored.

And I just think it is important to put that into perspective.

I do think that in agricultural perishable commodities we do have labor shortages, and I wish there was a way that we could

readily meet the demand and that we could fill those job requests with domestic workers.

If you have ways of doing it, I would love to talk to you and try to come up with ways to resolve the problem. I just don't think it is possible. And I wish that weren't the case, because I would not like to be supporting exemptions for perishable agricultural commodities, but I have to, and I do intend to do so.

But I applaud the two of you—we happen to agree in a lot of the positions that you have taken. I applaud you for your presentations.

Ms. HERNANDEZ. Let me make a comment.

You are absolutely correct that 85 percent of the undocumented population is an urban population. Fifteen percent is rural. The concentration of undocumented Mexicans within California in the Southwest in agriculture is substantial, so even though it is a small percentage of the total, there is a concentration there; and I agree with you that we have to address the problem of providing labor to agriculture, as to the restaurant industry, or any other industry.

But I think that we have to explore other ways of doing it, and I guess my comment goes to the hypocrisy of this piece of legislation. And it is an hypocrisy of how it is being sold to the American public.

And we are dealing with perception and myth, and you and I know that Mexicans and Mexican nationals do not make up the majority of our undocumented people—that, in fact, the census must indicate that it is 45 percent. But, yet, in the minds of America, we are all undocumented; they are all Mexicans; they are crossing the border; we are being inundated and it prevents legislators from really looking at the legislation and seeing whether it will work or not.

It is sort of trying to find a political solution and that politician solution is going to harm our community. So, I will be more than happy to work with the members to really try and find a solution, but we have to deal in the sense of what we have, and that is the Simpson-Mazzoli, H.R. 1510.

Mr. TORRES. If I can just add, Mr. Coelho—if you have gotten the impressions from my statements that I am picking on agriculture, I would correct them at this time.

If the secondary labor market in the restaurant industries wanted an H-2 program for them, rest assured, Mr. Coelho, that we would be before this committee or any other committee that has jurisdiction on that subject raising the same concerns that we have raised here today in the area of agriculture.

But I think that it is the history, and that is why I went into such depth in discussing the history of what has happened in the agriculture area. I know that the conditions in California have improved. Since I was 10 years old, I worked in the fields, digging tomatoes for 20 cents a crate—sometimes 16 cents depending on how good the grower was at that time.

And I worked in the fields for 9 years. I also did short and long hole tomato plants and sugar beets, and I know the conditions have improved significantly. But there is still a significant level of abuse, Mr. Coelho, and it is that abuse that really bothers us significantly, because on one hand, we are being told that we want to

stop the flow of people to the United States; but we continually want to make exceptions for these Mexicans if they are going to work.

That is an insult to us, Mr. Coelho. I tell you that as an Hispanic, as an American citizen of Mexican descent. That is an insult to us, when we are being told that our people are a threat to the internal security of this country because we speak a different language, yet we want to speak English; and we are told that we don't want you to come in but we are going to make exceptions if you rascals are going to work.

That does not sit well with us, Mr. Coelho——

Mr. COELHO. Mr. Torres, let me interrupt you now. There are people who may say what you are saying, but I don't say it, and I don't appreciate your lecture on that.

Mr. TORRES. No——

Mr. COELHO. But you are correct. There are people who say that. That is our society. They have a right to say things that they do say. I don't like it and you don't like it, and it is our job to try to correct it, but lecturing doesn't help the situation.

Now, the point I have made from the very beginning is that it is important though to try to identify what the real problem is, and there are some real problems. We need to resolve the real problems, not problems that existed 10 years ago, or 20 years ago. There are problems that do exist today, and those are the ones that I am going to work on and hopefully that we can correct. I appreciate Ms. Hernandez identifying what I consider are some of the real problems, and would like to resolve those.

No further questions at this time.

The CHAIRMAN. Mr. Morrison.

Mr. MORRISON. Mr. Chairman, just to commend the panelists on their appearance here and appreciate them being a part of this, and hope that we can work together to solve what obviously is a problem.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Stenholm.

Mr. STENHOLM. Thank you, Mr. Chairman.

Mr. Torres, do you believe that an employer should hire illegals?

Mr. TORRES. No, I don't. I believe that American citizens and American legal residents should be given the full opportunity to get any job that is being created by an American employer, whatever that American employer may have available.

Mr. STENHOLM. In your testimony, you indicate in your statements that you do not believe H.R. 1510 is the answer. How do you propose that an employer should identify who is legal and who is not?

Mr. TORRES. I don't believe that an employer is in a position to be able to do that. I think that that is a very difficult decision, and the responsibility that we are trying to give to the employer. I think that is the problem that sanctions create.

It makes a very good faith employer a potentially bad employer who may want to discriminate because they don't want the intrusion of the INS in the work place, and that is the difficulty with sanctions. It is, in fact, in a provision to discriminate. It is very difficult to tell who is legal and who is illegal; and that is precisely

the reason why we have long advocated, in the last 2 years, for the enforcement of labor laws, because in the testimony that I have presented, there is very clear correlation between the hiring of undocumented people and the violation of wage laws, not just the wage laws, but any labor standard law.

And if you remove the economic incentive from the employer to violate the labor law, you remove the major incentive that he has to hire an undocumented person. That way, you don't get into a situation with the employer's having to make a decision who he or she hires, but it is simply a question of the enforcement of the labor laws, because if an employer is complying with the labor laws, sure, there is going to be the hiring of an undocumented person. There is always going to be the hiring of an undocumented person. We are not going to be able to stop that.

But we believe very strongly that if we pursue the issue of the enforcement of labor laws, you have made a much more clear non-discriminatory policy decision in trying to deal with the problem of the hiring of undocumented persons, and we feel that that is a much more reasonable and a much more logical step if we are going to take the first step and not come in with sanctions right away.

But sanctions are going to create difficult problems, not just for our community; but it is going to create those problems for those employers.

It is going to put them between a rock and a hard place, and they are going to be afraid to hire; yet it is going to be held over their heads if they don't hire; and that is the difficultness of the sanctions provision and that is why we have always advocated the enforcement of the labor law.

Mr. STENHOLM. I don't disagree all that much with what you have just said, but I am troubled with your painting everyone with one brush. I am thinking now of the knowledge that I have of the employment of illegals in the area that I represent. You state that the major reason employers hire undocumented workers is due to their ability to violate U.S. labor laws.

I don't believe that is an accurate statement.

Mr. TORRES. I would agree with you, and I would correct that very clearly. I think you are absolutely right. I think that there are many employers who have chosen to hire an undocumented person because that person, in the opinion of the employer, is a much more aggressive and a much more hardworking individual, and they simply choose to hire that person.

Now, I agree with Mr. Coelho—and again, I want to apologize to Mr. Coelho if he thinks that I was lecturing him; it is just at times, Mr. Coelho, I get very committed to the cause that I am raising, so please excuse me if I have—

The CHAIRMAN. If the gentleman would yield. The Chair would like to remind the witness that he is our guest, and would he kindly address the Chair if he wishes to address any member of the committee.

The Gentleman from Texas may proceed.

Mr. COELHO. Mr. Chairman, would the gentleman yield?

Mr. STENHOLM. I would be happy to yield.

Mr. COELHO. I would just tell the witness that I have been known also to get emotional once in a while, so I excuse the witness.

Mr. TORRES. Thank you, Mr. Coelho.

I think that, Mr. Stenholm, if in fact—and I do believe, to some extent that there is a labor—there are difficulties for certain growers in the United States to get adequate labor under certain circumstances.

I believe that very firmly from the experiences that I had when I was a young man working in the fields.

But I believe that the first crack at a job should be given to an American citizen or a legal resident, and as much as the H-2 provisions that we have in the law now, none of them available in the existing law, attempt to do that, there is poor enforcement of that.

Now, the H-2 provisions do clearly benefit the growers on the east coast, much more than those in the Southwest and the west coast.

Now, we agree on that, and that is a premise that we agree with, and we are willing to start from there. We would prefer to see some program that would deal with the different products, with the different crops that have to be picked, and the different circumstances and criteria. Now, we are talking about a very unmanageable program; but we are open to that. It isn't that we are being fanatical or very narrow minded about it. It is just that when we see the provisions that are being proposed and the nature that they are in the bill presently in the potential amendments that may come forward, we see an extreme effort to be very quick in trying to expand the program much more than it should be, but I do strongly believe that we should look at these things, but I believe that we should study why certain American workers will not take certain jobs.

What are the circumstances under which the growers that need a labor supply cannot get it?

And under what conditions must they be able to get it, and under what conditions can in fact they get American workers a legal residence?

And after we have made those kinds of assessments, then we are in a better position to look at any kind of H-2 program that we should institute, but until that time, in our opinion, this is not proceeding with very sound judgment in our opinion.

Mr. STENHOLM. Mr. Chairman, if I may take just a moment to make an observation along the last line. If you assume that the 2.2 million farmers in America worked 50 weeks out of the year, with a 2-week vacation, assume that these farmers—2.2 million farmers—worked a 40-hour week, 50 weeks out of a year; you will find that they worked for less than \$4 an hour.

And I suggest that one of the primary things that we could do to help the farmworker would be to receive an income at the farm level that would allow compensation at the level that everyone must have to live in this country.

I know that this is not the subject of this hearing, but I think that in one way it is, because I think that one of the major points that, Arnold, you made in answer to my question, goes right back to that, and you corrected that. When you take a brush and paint broadly with it and say, the major reason—that is not always true.

Mr. TORRES. That is right.

Mr. STENHOLM. And I appreciate your correcting that.

The CHAIRMAN. I thank the gentlemen. I thank both the witnesses.

I do have something stuck in my mind, Ms. Hernandez, that I would like to clarify for the record.

Neither you nor Mr. Torres, from reading your testimony, and from listening to you, condoned that anyone break the law to hire an illegal.

That is your statement, isn't it?

Ms. HERNANDEZ. We have no objections with immigration policy; and we feel that this country is the sort of a nation—we have the right to control and patrol our borders. We have problems with the implementation and the way of doing that, but we in no way condone, you know, the breaking of the law.

The CHAIRMAN. I wanted to clarify that for the record, because I knew that was your position, and your intention, and your concerns, as are mine. But I will not involve myself personally while I preside.

We thank you very much for your contribution.

Mr. TORRES. Thank you very much, Mr. Chairman.

The CHAIRMAN. The next panel is Migrant Legal Services Panel—Mr. Geffert, Mr. Schell, and Mr. Moore. I would invite the three gentlemen to come to the witness table at this time.

If you have prepared statements, they will appear in the record. Although I see that you come from different parts, West Virginia, Maryland, and Virginia, I would assume that, representing your organization, that perhaps one of you can be the spokesman.

Mr. GEFFERT. Thank you, Mr. Chairman. Each of us has a short prepared statement.

The CHAIRMAN. Well, all three of your statements will appear in the record, and then we'll hear from you perhaps in the order in which I call you, Mr. Geffert.

STATEMENT OF GARRY G. GEFFERT, STAFF ATTORNEY, WEST VIRGINIA LEGAL SERVICES PLAN, INC.

Mr. GEFFERT. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, thank you for the opportunity to address you. My name is Garry Geffert. I'm a staff attorney with the West Virginia Legal Services Plan in Martinsburg, W. Va. Martinsburg is in the middle of an apple-producing region less than 90 miles from this chamber.

Much of the apple crop is harvested by temporary foreign workers, or H-2 workers. For the past 3 years, I have represented many U.S. workers who have been denied employment by the H-2 employers. I will address today some of the difficulties my clients have experienced.

Under current law, H-2 employers are required to make active efforts to recruit workers in the United States for a 60-day period. At the end of the 60-day period, the Department of Labor has 20 days to certify whether there are sufficient workers for the jobs.

All this activity is prior to the harvest. Then the employer is required to hire any qualified U.S. workers who apply for work

within the first 50 percent of the job period. Even under these provisions, U.S. workers are being denied jobs in West Virginia. The bill before this committee would result in more workers being denied jobs.

The bill would eliminate the requirement that U.S. workers be hired in the first half of the harvesting season. That provision ignores the nature of the system on the east coast by which farmworkers in the United States find employment.

U.S. workers begin arriving before there's work in an area, and after crops in another area are finished. Employers in West Virginia who use domestic farmworkers make their labor camps available to the workers when they begin arriving in the area before the harvest. That way, they are assured of having workers, U.S. workers, when the harvest begins, usually just after Labor Day.

The largest H-2 employer in my area, however, has refused to allow anyone to stay in its camp until the very day that work begins, even when a local organization offered to pay the utility bills for the early opening of the camp.

The U.S. workers were told instead: "We'll hire you if you come back in 2 weeks." Last year approximately 200 U.S. workers came to West Virginia in a few weeks before the apple harvest, but had to move on and leave West Virginia because there was no place there to live until the harvest began.

Workers continue to come into the area through the first several weeks of the season. That is in keeping with established hiring practices and patterns. The major H-2 employer itself follows that pattern of hiring with its H-2 workers.

In each of the last 2 years, it has changed its initial request for workers from a request for all 500 workers in the first week of September to having the workers brought in over a 3-week period on a staggered basis, with the largest contingent of workers requested for the final of the 3 weeks.

The current bill, however, would cut off the ability of the U.S. workers to obtain jobs at least a day before the work started. I have represented 14 U.S. workers who, even under current law, were refused employment by Tri-County Growers, Inc., during the first month of the 1980 apple harvest. A Department of Labor Administrative Law Judge and the Regional Administrator of the Department of Labor have ruled that those U.S. workers were denied jobs unlawfully.

In another case, a worker made three visits in advance of the season to the office of Mt. Levels Orchards, another H-2 employer in West Virginia, in an attempt to get a job, yet he got none.

I have affidavits showing that many more U.S. workers are turned away by growers who use H-2 workers. In 1982, the unemployment rate in Berkeley County, W. Va., where I live, increased from 10.1 percent in the month of August to 13 percent for the month of September.

The State Job Service attributed the 2.9-percent increase to U.S. farmworkers who had been unable to find work in the local orchards in September. Yet during that September, Tri-County Growers, Inc., which is located in Berkeley County, and which annually receives over 400 H-2 workers, was complaining that it could not find U.S. workers to harvest the crop.

There simply is no real effort to recruit U.S. workers. As part of the H-2 employment recruitment effort, the employer must submit a job offer through the Interstate Employment Service System that complies with the minimum requirement set out in Department of Labor regulations.

With the exception of annual changes in wage rate, those requirements have been unchanged since 1978. The Interstate Employment Service System has been manipulated by the H-2 employers to frustrate the recruitment requirement. The employers annually submit the job offers at the last minute, so that part of the 60-day recruitment period is used correcting the errors built into the job offers by the employers.

For example, last year one West Virginia employer offered new employees a wage rate of only \$1.81 per hour, far below the minimum wage, clearly unlawful. Further, all the West Virginia H-2 employers attempted to increase productivity rates, a practice that is clearly forbidden by current regulations, as the court has recently ruled.

Because of these plainly unlawful terms, the job offers could not be distributed through the interstate system until late August, less than 3 weeks before the beginning of the harvest. For one H-2 grower, the time period between the acceptance of the job offer and the certification by the Department of Labor that no workers were available in the United States, that is, the recruitment period, was only 24 hours.

Last year, West Virginia job offers did not make the 40-mile trip to the Pennsylvania apple area until late September, nearly a month into the season, while West Virginia growers complained that they were unable to find U.S. workers. There was an oversupply of apple pickers just 40 miles away. They were U.S. workers.

Not coincidentally, there are no H-2 workers in the Pennsylvania apple harvest. History suggests a shortening of the recruitment period would only encourage further manipulation by the employers. Real affirmative recruitment efforts by the employers are needed. Our local newspaper has reported on the annual trip made by a delegation of West Virginia H-2 employers to Jamaica well in advance of the apple harvest season to discuss and arrange for the use of H-2 workers. No similar trip was made to Florida, the Carolinas, or other supply States to make similar arrangements for the use of U.S. workers.

Employers in West Virginia who make those contacts with those base states are able to find U.S. workers.

I thank the committee for its attention. Because of the lateness of the day, our panel is keeping its remarks brief. We would request that the record remain open so that our panel can supplement its brief remarks with more detailed information.

Thank you.

[The prepared statement of Mr. Geffert appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, gentlemen, and your statement will appear in the record. The record will remain open for a reasonable time to allow either the witnesses to present testimony. I have here some testimony which has been forwarded by the AFL-CIO that I

would include in the record at the end of the witnesses today, on their behalf, without objection.

Mr. Schell.

STATEMENT OF GREGORY SCHELL, MANAGING ATTORNEY, MIGRANT FARM WORKER DIVISION, LEGAL AID BUREAU OF MARYLAND

Mr. SCHELL. Thank you, Mr. Chairman, for this opportunity. My name is Gregory Schell. I'm managing attorney of the migrant farmworker division of the Legal Aid Bureau of Maryland.

Prior to this January, I worked for approximately 3 years representing migrant farmworkers in southern and central Florida. During this time, I've been approached on numerous occasions by American farmworkers who had complaints regarding the temporary farm labor, or H-2, program, and I'd like to share with you the flip side of some of the comments expressed by the employer panel today.

The employers complained about the amount of litigation they were involved with, and I don't dispute that. My clients, though, have not been able to get that far, and that's what I'd like to focus my comments on. My comments are directed at the present system's failure to provide workers who feel they have been unlawfully treated with respect to H-2 matters a right to access the court system.

The present act does not expressly provide aggrieved domestic workers any legal redress for instances in which they have been unlawfully passed over for jobs in favor of H-2 workers, and as was expressed earlier today, this is in sharp contrast to the regulations governing the Department of Labor's temporary labor certification procedures, which provide a wide range of administrative and judicial remedies for growers who feel their H-2 applications have not been treated fairly by the Department, and I think some of the panel members on the employers' panel did discuss occasions when they had successfully challenged actions by the Department of Labor on H-2 issues.

In order to produce a temporary labor program that is equitable to both employers and American workers, it is essential that all parties affected by any particular decision regarding the admission of H-2 workers have a right of judicial review.

Unfortunately, H.R. 1510, the bill adopted by the Immigration Subcommittee of the Judiciary Committee, does not include such a provision. There are other proposals presently before the House that expressly provide that any person aggrieved by a violation of the law may seek review in an appropriate Federal court.

In your consideration of legislation in this area, I urge you to incorporate similar language. Under current law, domestic workers who feel they've been wrongfully denied jobs in favor of H-2 workers have only one recourse. They may file a complaint with the Department of Labor. If the Department of Labor finds the complaint is meritorious, only very limited sanctions attach. The Department of Labor cannot require the offending employer to pay restitution to the domestic worker. The sole sanction that can be imposed by

the Department of Labor is for the Department to refuse to grant future H-2 certifications for the employer in question.

This sanction has certain obvious shortcomings. It is a fairly drastic remedy to be imposed against an employer, and as a result it is used sparingly by the Department of Labor. More importantly, any such action by the Department of Labor is but small comfort to the domestic worker who has unlawfully been denied a job because the employer utilized H-2 workers.

Several examples illustrate this problem. In 1980, Lucius Donaldson and Robert Ackerman sought apple-picking jobs with two West Virginia growers who have for many years relied on H-2 workers during the harvest season. Both Donaldson and Ackerman are American citizens who have for a number of years worked as apple pickers in the autumn months.

Both Donaldson and Ackerman were rejected for employment by the growers in question. The two Americans filed administrative complaints with the Labor Department. In May 1983, over 2 years later, after administrative hearings at several levels, a Federal Administrative Law Judge ruled in favor of Donaldson and Ackerman, the two American workers.

However, the administrative law judge lacked the authority to require the growers to pay any damages to Donaldson and Ackerman. Now, it's possible the Labor Department may deny future H-2 applications from the growers in question. However, this will be nothing to compensate Mr. Donaldson and Mr. Ackerman for the weeks they sat unemployed while the growers utilized H-2 workers.

A similar situation exists with respect to the Florida sugar cane harvest. The Florida sugar cane industry annually employs nearly 9,000 H-2 workers to cut its sugar cane crop, and is in fact the largest present user of the H-2 system.

In 1980, thousands of Cubans and Haitian refugees applied to the sugar companies for jobs as cane cutters. Since these refugees had been granted permission to work lawfully in this country by the Immigration Service, they were entitled to the same preference over H-2 workers generally afforded all American workers.

Over 1,000 of the refugees started the 1980-81 harvest as cane cutters. Only about 100 completed the 7-month season. Many of the refugees were terminated by the companies for alleged nonproductivity. I reviewed a number of records regarding these workers, and I can state that a number of these terminations are questionable at best, and the conclusions of nonproductivity similarly are open to dispute.

The workers' concern with these firings increased the following autumn, when many of them again wanted to apply for sugar cane jobs. They discovered that the Florida sugar cane had adopted a policy throughout the industry of refusing to hire any worker from the previous year's harvest who had failed to complete the 1980-81 season, regardless of the reason the worker had failed to complete the season.

A number of the workers filed complaints with the Labor Department, claiming they should be hired for the 1981-82 season or, at the very minimum, they should be given some opportunity to

challenge their termination from the prior year, to present evidence that they had been wrongfully treated.

The Labor Department refused to grant even administrative hearings to these workers. Their complaints have languished. There is no due process—no hearing—no court—nothing.

Most of these workers were underemployed and many were unemployed for weeks on end during the 1981-82 sugar cane harvest while thousands of H-2 workers were employed within a 5-mile radius of the Haitian workers' homes. Now, these Haitian workers' claims may be determined to be justified, or it's possible the employer's action will be upheld. The problem is, we will never really know the answer to that question if the workers are not given their proverbial day in court.

It certainly appears unfair to permit the H-2 employers to have a full range of administrative and judicial remedies open to them on H-2 matters when denying the same to domestic workers who have sought jobs with H-2 employers, but for whatever reason have been denied employment.

My clients are not asking for special treatment. They merely seek the same rights that are presently guaranteed to employers seeking H-2 workers. Just as certain growers' livelihoods may hinge on a Labor Department decision regarding H-2 workers, so does the economic survival of my clients, all of whom are indigent farm workers.

I urge you to expressly provide for access to judicial review for all aggrieved parties, growers, and workers alike, in any legislation this committee adopts with respect to the temporary labor program.

Thank you for your attention, and I appreciate your concern in these matters.

[The prepared statement of Mr. Schell appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much. Mr. Moore.

**STATEMENT OF ROBERT N. MOORE, ATTORNEY, VIRGINIA FARM-
WORKERS LEGAL ASSISTANCE PROJECT, PENINSULAR LEGAL
AID CENTER, INC.**

Mr. MOORE. Thank you, Mr. Chairman. Members of this committee, and I appreciate the opportunity to appear here today and talk with you, my name is Robert Moore, and I am an attorney with the Virginia Farmworkers Legal Assistance project, of Peninsular Legal Aid, which has an office in Belle Haven on Virginia's Eastern Shore.

Prior to April 1 of this year, I've been an attorney for almost 3 years with the Farmworker Unit of Pine Tree Legal Assistance in Lewiston, Maine. The major portion of my professional experience in legal services has been representation of clients, U.S. workers, on issues relating to the use of H-2 workers in agriculture and logging.

As we are all aware, the present H-2 statute and regulations established certain minimal terms and conditions of employment which must be offered to agricultural workers by employers seeking to be certified to use temporary farm workers or H-2 workers.

These minimal terms and conditions are designed in theory to avoid the potential adverse effects the use of foreign workers will have upon the wages and working conditions of U.S. workers.

Such minimal terms and conditions of employment and the avoidance of the adverse effect of foreign workers are vital to the present H-2 program, and must be preserved as an integral part of any future program.

I understand that there have been proposals with regard to the Simpson-Mazzoli bill which thoughtfully consider the inclusion of specific provisions for the protection of U.S. workers that are presently included in the H-2 regs, and I implore this committee to similarly thoughtfully and thoroughly consider these protections with a view toward supporting their incorporation in any substantive amendments to the H-2 provisions of the bill under discussion today.

Specifically, I offer certain observations and comments with regard to wage rate floors, productivity requirements, and training periods. The adverse effect upon domestic workers caused by the temporary foreign workers is most often a direct and real depression of wages. Agricultural harvest workers are almost always paid on a piece rate basis. If we look at the piece rates paid in the apple industry in Maine, an industry in which H-2 workers have been used each year for many years, the adverse effect on wages is clear. Each year the Maine Department of Labor conducts an in-season survey of piece rate wages that are paid to apple harvest workers as part of its responsibility under the H-2 program.

Beginning about 1979, the Maine Department of Labor developed a form on which the data results of the survey were distinguished in the sense that the wages—they distinguished between wages paid by orchards using H-2 workers and wages paid by orchards only using U.S. workers.

Even though this comparison is often between orchards only a few miles apart, the wage disparities were startling. For example, in 1981 the in-season wage survey results for the Maine Department of Labor indicated that harvest workers in orchards using only U.S. workers were paid on a piece rate basis an average 60 cents per unit, while orchards using H-2 workers were paying domestic workers 47 cents per unit.

At the employer-established production standard of 56 units a day for a 6-day week, this is a loss of about \$41 per week per U.S. worker. Obviously, even the present guaranteed hourly adverse effect wage rate and prevailing piece rate wage floors required pursuant to the present H-2 statute and regulations have been ineffective.

Without the preservation of these wage floors, the protection of U.S. workers' wage rates from the adverse effect of foreign workers would be nonexistent. Intimately connected to the wage floors are reasonable productivity requirements and training periods. U.S. agricultural workers must be assured of a fair opportunity to train and have their performance measured by a reasonable productivity standard.

In Maine, U.S. apple pickers have been required to report to work at the earliest part of the harvest prior to the arrival of foreign workers. This early starting date does not coincide with the

peak apple harvest. The U.S. workers are then required to selectively pick the few ripe apples.

The result is termination of the workers after a few days due to low productivity. Then foreign workers arrive at the work site, pick at a time when there are far more ripened apples per tree and their higher productivity rate is cited as justification for the prior termination of so-called unproductive U.S. workers.

In addition, H-2 workers on the east coast in apples and other crops have traditionally been male, in excellent health, relatively youthful, and they have experience. The experience factor is not to be underestimated when productivity standards are considered. During the fall of 1981, for example, a newspaper article appeared in the local newspapers in Maine which reported about the use of temporary foreign workers in the apple harvest of Maine. In particular, the article cited the fact that many workers returned each year to the same orchard, and that in fact one H-2 worker had been working for a Maine grower each year for the past 10 years.

This occurs throughout the industry. It has been suggested that the establishing of training periods and productivity standards based upon performance of experienced H-2 workers is analogous to using the batting average of the All-Star team as the standard performance level expected of all major league baseball players.

Such a productivity requirement would be absurd when applied to baseball. The absurdity is mysteriously transformed into reasonableness when it is applied to U.S. agricultural workers. We may all be able to agree on one thing. The present functioning of the H-2 system is a failure. In order to ensure that the proposed new H-2 system is not designed to similarly fail in its effect, I would suggest that all assurances of U.S. worker protection be included.

As an aside, it's interesting to note here today that there's been a lot of discussion about the failure of the Department of Labor to enforce its own regulations with regard to the H-2 program, both with respect to the growers and with respect to the workers.

The worker assurances and these minimal terms and conditions of employment are contained in the regulations. We propose that they be codified as part of the H-2 provisions, and I ask this question in response to an anticipated question, "Why be codified rather than be in the regulations?"

I only have to ask at the hearing everyone today: "Would you trust and leave it entirely up to the Department of Labor to see that these provisions are provided for the protection of the worker in the regulations, and that they're therefore enforced?"

I would particularly suggest that the following inclusions be made. Number one, that the adverse effect wage rate and prevailing piece rate wage floors be preserved.

Number two, that productivity standards be fixed in the sense that they are not to be increased in response to an increase in the wage floor, which is presently required under regulations, and the court has agreed recently that this must be done and conformed to, and the standards be reasonably related to the productivity of an average worker.

Number three, that training periods in fact train and are reasonably related to what can be expected of workers during a specific period in which the training takes place.

I thank you, gentlemen, for the opportunity to appear today.
Thank you.

[The prepared statement of Mr. Moore appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much, sir.

Mr. Morrison.

Mr. MORRISON. I would just like to thank the three attorneys for their presentation, their diligent efforts on behalf of workers, and since I guess none of us have had that much experience with H-2, you've certainly enlightened us. Thank you very much.

The CHAIRMAN. We thank you. I might inform you, I don't know if you appeared before the Education and Labor Committee, some of the matters which you discussed do not fall within our jurisdiction, but I know and I am reminded by staff that Congressman Miller of California has addressed some of the issues, and we appreciate your contribution here. To the extent that we have jurisdiction, I guess if you hit them all you'll cover the waterfront. We'll make your views known, so we appreciate your contribution today.

The record will remain open. I hate to state a date, but within a reasonable time.

Mr. MOORE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The next panel is Mr. Ralph Rayburn, executive director, Texas Shrimp Association. He is accompanied by Messrs. Julius Collins, Gustavo Barrera, and Guy Pete.

We welcome you gentlemen to the committee. I assume the presentation will be made by Mr. Rayburn but if any of you distinguished gentlemen wish to address the committee you are welcome to do so also. Mr. Rayburn.

STATEMENT OF RALPH RAYBURN, EXECUTIVE DIRECTOR, TEXAS SHRIMP ASSOCIATION, ACCOMPANIED BY JULIUS COLLINS, GUSTAVO BARRERA, AND GUY PETE

Mr. RAYBURN. Thank you, Mr. Chairman, and members of the committee. My name is Ralph Rayburn. I am the executive director of the Texas Shrimp Association from Austin, Tex.

The Texas Shrimp Association is the trade association based in Texas made up of harvesters of shrimp in the Gulf of Mexico.

I have asked Mr. Gustavo Barrera to make some general comments on the shrimp industry of Texas and how it fits into the discussion of the committee today. Then Mr. Guy Pete and Mr. Julius Collins will be available to answer questions. I will have some short comments after the completion of Mr. Barrera's testimony. So Mr. Chairman, if Mr. Barrera could take on his testimony now.

[The prepared statement of Mr. Rayburn appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you. Mr. Barrera, we welcome you and we will be happy to hear from you at this time.

STATEMENT OF GUSTAVO BARRERA, DIRECTOR, TEXAS SHRIMP ASSOCIATION AND PRESIDENT, PORT ISABEL SHRIMP PRODUCERS ASSOCIATION

Mr. BARRERA. Mr. Chairman and members of the committee, my name is Gustavo Barrera. I am from Port Isabel, Tex., where my brothers and I own and operate a fleet of Gulf shrimp boats.

I am the president of the Port Isabel Shrimp Producers Association and I am also director of the Texas Shrimp Association.

I was born and raised in Port Isabel where I started going to sea on the shrimp boats when I was 17 years old so I could pay my way through college. Today we find very few young men who are American citizens that like this type of work and are willing to go to sea. The work is hard but the pay is good.

Port Isabel is a little fishing community located at the southernmost tip of Texas only a few miles from the Mexican border. We have many illegal aliens that swim the river and are willing to come to work on our boats. Our work is seasonal and when the shrimp are there we have to keep our boats on the move. Usually our season runs from around July 15 until the end of the year. Our normal procedure for recruiting a crew begins with the boat owner recruiting a captain who must be an American citizen. He in turn hires the rest of the crew which runs from three to five men, depending on the amount of shrimp we are catching at that time.

Our fishermen are considered independent contractors and are paid a percentage of the catch. Therefore, the Federal Government considers them to be self-employed.

Most of our captains have been with us for several years but the rest of the crew changes from year to year. When our boats leave the dock they are gone anywhere from 2 to 6 weeks depending on whether it is a freezer boat or an ice boat.

Our boats will stay out as long as they can, provided they don't have any major breakdowns or a hurricane doesn't brew up from the Gulf of Mexico.

As I pointed out earlier, our work is very seasonal. This is due mostly to the loss of our traditional fishing grounds in Mexican waters which we lost a few years ago. Before we lost our access to fishing in Mexican waters, we could fish year round. Now our boats are tied to the docks, idle, rusting away from January through June. Our demand for a seasonal crew is not easily found because of two basic reasons. First, the work is hard and dirty and is very undesirable to the vast majority of the domestic work force. Second, to hire a crew of completely new men would be extremely dangerous. The work is fast and furious when the season opens and a new man would put his life in danger or could get someone else killed with his inexperience or possibly get him thrown overboard.

As I understand it, the basic argument for stricter enforcement of immigration standards revolves around two basic sentiments.

First, there is job displacement. In reality, demand for experienced fishermen far outweighs domestic supply during our season. If it weren't for the alien work force many of our boats would remain tied to the docks. Consequently many of our legal U.S. workers would also be denied the chance to earn a living.

The second major argument involves illegal aliens' demand on public services. Due to the fact that shrimpers spend most of their time at sea, taxpayer services are not used by the alien fishermen.

Their families remain in Mexico and the workers stay here and live on the boats until the season is over. When the season is over they have saved up enough money to go back home to tide them over until the next season when they come back. Therefore, they are no burden on local taxpayers and the local school districts. In light of these facts I would ask you to weigh heavily the consequences on the shrimp industry of any proposed legislation which would upset the delicate employment demand balance.

It could have the effect of devastating an industry which already has more problems than it can handle. Furthermore, it would put us in a very embarrassing and insulting position to have every one of our employees prove their citizenship status. They would probably ask me to prove my citizenship status.

I doubt that I have enough papers on me to prove that I am an American citizen if the border patrol decided to pick me up while I am here in Washington.

Thank you very much for your time. I will be glad to answer any questions.

[The prepared statement of Mr. Barrera appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much, Mr. Barrera. It would happen when my friends are before me, but we have a vote on the floor that we must go and record our vote. So if you would be kind enough to remain where you are, we will recess and I will come back as shortly as possible to continue with the panel.

[Recess taken.]

The CHAIRMAN. The meeting will be in order. Thank you for your cooperation. We thank you for your statement, Mr. Barrera. Mr. Rayburn?

Mr. RAYBURN. Yes, Mr. Chairman. I would like to continue just for a short period of time indicating that it is our initial impression that we would fall as shrimp operators under the agricultural provisions of the H-2 program. With that then, we would have to have some special consideration in any regulatory drafting.

Primarily, the current situation within the industry is that all crewmen are treated the same. Obviously when they are at sea the vessel serves as their habitat and these vessels are conditioned to meet the needs of the crewmen to include berthing, kitchen facilities, restroom facilities, and these kinds of items.

That would be somewhat different from, say, your standard terrestrial type activity of production where specific requirements for housing would be required. Food on board the vessel of course is obtained. It is the normal course that the crewman pays for his own food, it is bought before they go to sea and then prepared at sea.

We feel like if this is the case that we are considered under the agricultural H-2 program, we would certainly like to have the committee in your report indicate the need to serve our particular interest in order that we could have the flexibility in the regulations to service the particular characteristics of our industry.

Mr. Chairman, because of the late hour and the buzzer going off, that would conclude my statement and if you have any questions of the panel——

The CHAIRMAN. Thank you very much. Let me ask you about the way a shrimp boat operates—the crew and the time it stays out and the stocking for food and so on. This is historical, is it not? This is the way it has been done since time immemorial?

Mr. COLLINS. Mr. Chairman, I can answer that for you. My name is Julius Collins. Yes, it has been done for years. I have been in the business myself for over 30 years. I remember as a little boy we used to do the same thing we are doing now.

The CHAIRMAN. Now, I would like, as I did with the agricultural workers, ask about pay. What is your season for shrimping in Texas and would you define for us a shrimp worker, what the individual is called on the crew and then what the individual would make for the course of that season?

Mr. COLLINS. Myself?

The CHAIRMAN. Yes, Mr. Collins.

Mr. COLLINS. Yes. Our season right now—been phased out of Mexico. Our season runs from about July 15 till Christmas. Although the shrimp catch won't be as great as it was in years before, the price value is really up there at this time of year, the last few seasons.

The captain of the boat of course is the most experienced fellow on the boat. He might have been at sea for a great number of years. He will earn a percentage of the catch.

Usually the boat itself will take 65 percent and the crew will get 35 percent. Out of that 35 percent the captain gets his share, whatever the split is with the rest of the crew. The second man on the boat when it is slack season is the rigman or the wenchman, the guy that takes care of the nets, puts the nets overboard, pulls them up, handles the engine, and most of the time he is the cook on the boat. The third man, he gets part of the percentage. The third man is what we call the header. He is an apprentice, he is a new man on the boat. Sometimes he is maybe a year or two on the boat, sometimes he is just a new guy coming on the boat. He is not paid as much as the other two fellows because his experience is not there.

Shrimping is a—it takes quite a bit of time to get experience on a shrimp boat. Even standing up in a rough sea on the deck of a boat, it takes quite a while to accomplish that.

So the third man will not be paid as much because experience is not there. But he usually gets so much a pound. In fact, if the boat comes in with, let's say, 5,000 pounds he might get 5 cents a pound or 10 cents; usually it is 10 cents a pound to start with which is pretty good pay.

As he goes along, as he progresses trip after trip, then his pay is raised to about 20 cents a pound which is about top for the third man. Then he promotes himself to a rigman and a couple of years later he might promote himself to a captain. It is a very good paying job. A captain in a good season might make as high as about \$30,000, let's say, on the average, a very good captain. The rigman might be in the vicinity of \$22,000 to \$25,000. You take the

third man, an apprentice, he will make anywhere from I would say \$10,000-\$12,000 a year.

The CHAIRMAN. And is it your testimony that you have difficulty getting native residents or legal residents to work on your boats?

Mr. COLLINS. Yes, Mr. Chairman. I grew up a long time ago. [Laughter.]

That is a long time ago because, you know, to me it is a long time ago. You would go to school until you were strong enough to work. During the holidays you would go and work on the boats and you would gain experience as you go along.

When I quit school I was 13 years old or 14 years old. I had enough experience to start out on the job. Nowadays the kids go to school 12 years and when he gets out of school if he doesn't go to college he goes on a shrimp boat. He tries that and after 12 years of school say, "No, I don't like that, I will do something else."

The population now, it is a different breed of people. They are getting out of school and they want to do something, they try it and it is not their thing so they do something else. It is very hard to get the local people or the American people, residents, to go on them jobs. It is a very dirty job, it is a very hard job. You are away from your family so long. So it is very hard to get people interested in shrimping although it pays good.

Mr. BARRERA. Excuse me, Mr. Chairman.

The CHAIRMAN. Mr. Barrera.

Mr. BARRERA. I might add that the local people tried to go out on the shrimp boats and they go out and after they have been out a day or so they get seasick. If anybody has ever been seasick, you know, there is no worse feeling. You know, you feel like dying.

So they go out there and they are seasick and after 2 or 3 days they say, "Hey, take me home." Also another thing, on our freezer boats they go out for 30 to 40 days and the local people just don't want to go out and stay out that long.

The CHAIRMAN. Mr. Pete, do you have any statement or anything you would like to say?

Mr. PETE. Thank you, Mr. Chairman. I am happy to have an opportunity to speak to you. The only thing I would say—and I am like Mr. Collins, you know, I am not as old as him but I was born and raised in this industry. The only money I ever earned that didn't come out of the Gulf of Mexico when I worked for an uncle—he paid me \$50 a month. That was in World War II. My forefathers were all fishermen. I am proud of my industry. I earned a good living and I hope to continue.

One thing that we don't want to be burdened with, Mr. Chairman, and—some of the—in this bill will put us in a position to keep a record and stuff like that. Our season is very short. We need experienced people. We are in the area where they have them.

A lot of these boys that are working on our boats are people that I guess since Texas has been a republic that the people of Mexico have worked in this country and brought the money back over to Mexico.

They live over there with their families. They are experienced people. They are over here for the same reason everybody else is, to make money.

One thing we have found out that I would like to say before the Commission is that—Mexico's second greatest income is the Mexicans working over here and bringing the money back to Mexico.

So we are just across the river like you are here from one country to the other. So we have easy access to these people going back and forth. I hope that some of the things that are said today will be taken into consideration. This industry is hurting right now like all industries in this country and that we can work this thing out where it won't be no burden on us more than we have now. Thank you.

The CHAIRMAN. Thank you very much. Mr. Rayburn.

Mr. RAYBURN. Thank you, Mr. Chairman, for your time and for hearing us today.

The CHAIRMAN. Thank you very much. We very much appreciate your taking the time to be with us and to inform us of the concerns of your industry. We appreciate it.

The next witness that we have is Ms. Stephanie Bower.

Ms. Bower, we welcome you, and we'll be very happy to hear from you at this time.

**STATEMENT OF STEPHANIE BOWER, LEGISLATIVE
REPRESENTATIVE, UNITED FARM WORKERS OF AMERICA**

Ms. BOWER. On behalf of the United Farm Workers, I thank you, Mr. Chairman, for the opportunity to appear before this committee and express our point of view on the subject of H-2 workers.

As you are well aware, our union's membership resides mainly in California, with members in Texas, Florida, Arizona, and beginnings in Illinois.

Agricultural employers would lead the Congress and the American people to believe that their fruit and vegetables would rot on the vine, and in the field, without some type of bracero program—be it guestworkers or H-2's.

Our union has brought stability, good wages, and working conditions to the lives of many farmworker families. Such benefits of medical coverage, clinic, pension plan, paid vacation, sanitary and safety conditions, and children able to get an education, are changes which farmworkers now enjoy where they hold membership in the United Farm Workers Union.

The first thing I'd like to address, Mr. Chairman, is our unemployment and layoffs. Unemployment is extremely high in agricultural counties in California.

As of a month ago, there was 34.4 percent unemployment in Imperial County; 19.9 percent in Stanislaus County; 18.6 percent in San Joaquin; 23 percent in San Benito; 14.9 percent in Kern; 14.7 percent in Monterey; and 16.9 percent in Merced.

These estimates are conservative, as many farmworkers don't file unemployment claims with the State, and are therefore, not reflected in these figures.

In a study conducted by Dr. Tim Horgan of St. Leo College, St. Leo, Fla., the conclusion is reached there are 300,000 to 400,000 agricultural workers available and only 100,000 agricultural jobs.

In November 1982, while 200 H-2 lettuce workers were certified to come into Florida from Mexico, our Avon Park, Florida office re-

ported 1,000 unemployed farmworkers in the area, while 230 of our members were still laid off from the previous season.

In Arizona hundreds of farmworkers had been laid off, and 170 UFW members were on the waiting list. And our Texas office reported that unemployment among farmworkers in the Valley, Mr. Chairman, was 50 to 60 percent.

At that same time, our Salinas, Calif., field office reported a waiting list of 1,500 union members. Salinas, as you know, is the very large lettuce growing area. The membership there are experienced lettuce workers.

As of only a month ago, our other field offices in California reported the following statistics regarding unemployment and layoffs.

Calexico, 5,000 unemployed farmworkers in the area.

Coachello, 1,500 union members under contract laid off, and another 1,000 members in the area unemployed.

Delano had the highest unemployment since the recession began; 1,200 workers unemployed from ranches under contract. Of the 1,200, 500 were laid off. Another 1,000 workers in the area were unemployed.

The Tex-Cal Land Management Co. gave notice in April to 1,000 workers that their services were no longer needed. They then brought in labor contractors with a history of violating the old Farm Labor Contractor Act to hire a docile work force.

In Livingston, 750 to 800 unemployed union members were reported, while in Oxnard 100 members are on the waiting list. In Parlier 900 members were unemployed, which represented 90 percent unemployment at the time.

Salinas, Calif., has a continuous list of 1,300 to 1,500 members who are waiting, and who have seniority.

In San Ysidro we have 438 members on a waiting list. Santa Maria 200 of 500 unemployed members, and several thousand unemployed farmworkers in the area.

In Hollister 400 members have been laid off; 3,000 unemployed farmworkers are in the area. And in the Napa Valley there are always 400 workers in excess of jobs during the harvest and pruning season.

We, as you know, have been trying to organize the union. We have three examples—I mean, I have three here. We have a lot more. When our union has directly been affected by being displaced by H-2 workers, or another work force.

Now, as you know, H-2's have not been used in California, so the H-2 example I will use here is from Texas, and it happened in 1978.

When unemployment in the Texas Rio Grande Valley was the highest in the State, Mexican H-2 workers were hired by the Griffin & Brand Co. of Presidio. The United Farm Workers had submitted 1,700 names, addresses, and telephone numbers of local workers who wished to pick crops in the Presidio area. Not one of the 1,700 applicants was hired by the company.

There are two cases in California which aren't H-2's, but we think point up the problem. The *Kawano v. UFW* law suit, which was brought under the new California Agricultural Labor Relations Act, which is now 5 years old, but it's still kind of new com-

pared to the other one, the United Farm Workers won an election. The workers were all fired.

We proceeded to file suit under the California Agricultural Labor Relations Act. Not only did we win the case, but the back wages of all the workers.

The other one is *Uhegawa v. UFW*. In this instance, the workers were fired before the United Farm Workers had a chance to hold an election.

We contend that there's not a worker shortage, Mr. Chairman, but a job shortage. There are three main points on H-2 that are critical to the current farm labor work force.

These are, assuring maximum recruitment of current work force. A private right of action, and the current regulations being put into law.

Congressman George Miller, and the Education and Labor Committee, have been working very hard to assure these practices. We feel that the current agricultural work force should be legalized. Certainly they have been contributing members of our society.

If there's a shortage of farmworkers, as agriculture interests would lead you to believe, why aren't they screaming for legalization to the most current date possible?

Legal workers don't live in fear. They get social security, unemployment insurance, and they're not afraid to speak up for their rights.

While many other industries have taken their trade to a captive work force in other countries, agricultural interests cannot move the Earth but bring their captive work force here.

Thank you very much, Mr. Chairman.

[The prepared statement of Ms. Bower appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Ms. Bower. If you did not read your whole statement, we will have it printed in the record.

Thank you very much. I have no questions. You covered the subject adequately.

Mr. Morrison.

Mr. MORRISON. No; thank you.

The CHAIRMAN. We thank you very much. I guess the most patient individual of the day is you, Mr. Misler.

We have Mr. Albert Misler, a distinguished attorney-at-law from Washington, one of the renowned experts on immigration law. We welcome you, and will hear from you at this time.

STATEMENT OF ALBERT D. MISLER, ATTORNEY, FRIEDLANDER, MISLER, FRIEDLANDER, SLOAN & HERZ, ON BEHALF OF VIRGINIA AGRICULTURAL GROWERS ASSOCIATION

Mr. MISLER. Thank you, Mr. Chairman. Thanks for those kudos that you just gave me.

My name is Albert D. Misler. I'm in the private practice of law. I'm appearing here on behalf of a client, Virginia Agricultural Growers Association, whose membership is predominantly tobacco growers of Virginia.

The tobacco growers of Virginia have moved away about 4 years ago from using illegal labor, and have been making a very strenu-

ous effort to meet their labor needs, and in that connection, have found it necessary annually to bring in approximately 850 foreign workers to supplement their labor.

We have tried very hard to assure the Labor Department that we intend to do everything that we can to explore all possible sources of domestic labor.

We've been complimented by the Department again and again. I must say, it's been a painful experience. The relentless, implacable, unremitting harassment we have had, which I will describe to you now, is like having a Caesarian Section every day when you come home.

I am referring to, Mr. Chairman, the page 67 of H.R. 1510, beginning at line 19. It says, in relation to the labor certification, "except that the terms of such a labor certification remain effective only if the employer continues to accept for employment," and this is the key, "until the date the aliens depart for work with the employer, qualified eligible individuals who apply or are referred to the employer."

In other words, we must continue to attempt to find American workers until the Mexicans that we use actually arrive at a place of employment.

The Labor Department has very recently informed us they have, and have had for some time, a regulation which says that you must continue to recruit American workers until 50 percent of the contract period has elapsed.

That flies in the teeth, from what the Immigration Service says, and we have taken the position, they have no legal authority to make that decision.

And I will refer the committee to section 214 of the Immigration Act, which says:

The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General made by regulations prescribed.

Immigration Service has long taken the position that once they make that certification, they approve a petition, and these workers are brought in, they are not to be removed, or they are permitted to be here until the dates specified—expiration date specified in their petition, which is just contrary to what the Labor Department is doing.

Last Wednesday we met with Congressman Dan Daniel, the staff of Senator Warner, the staff of Senator Tribble, the Immigration Service representative, the Labor Department representative, and my clients, myself, and several others.

This was a subject of discussion, and Congressman Daniel asked the Immigration Service, "What is your view?"

The Immigration Service said:

Once we approve that petition for a specific number of workers for a specific period, they are to remain there unless we have them removed.

Now, the face of it, it would seem that if there are American workers available, why shouldn't you send the Mexicans back. There's a problem.

Since 1947 every contract with every foreign worker, and with Americans, contains a provision under which the employer guaran-

tees the worker work for three-quarter of the contract period. So that if we were to send these Mexicans back at this time, we would have to pay them for the difference between what they have worked, and three quarter guarantee.

When the Labor Department started—first approached us, we had to do this, we opposed it. We estimated it would cost in excess of \$1 million if we had to send these people back.

They, as we have been subjected to for some time, threatened us with withholding any future services of the Labor Department, which meant that we have a certification due today, they would not give it.

They insisted that what we do is we give them a commitment that we will continue on the existing order that we already have to recruit American workers and send these people home.

They also insisted we do it for the one that's coming up today. I just want to indicate to you that even if we had—we do comply with that, here's what our experience says.

We went down to Florida at their insistence. They gave a labor certification to some Florida farmers, then ordered us to go down and recruit in Florida. They ordered us to recruit Americans and Haitians. And we went down. We offered jobs to 61 Americans. Not one of them showed up on the day of employment.

We had 50 Haitians that we interviewed, and came up—58 interviewed. We offered 50 of them jobs. They came to Danville. On the day they came there they precipitated a riot. We had to call the sheriff. Twenty left the same day without going to the farm. They were demanding telephones in their barracks. We even had one young lady who met her boyfriend there, and wanted to be housed with him or she wouldn't work. They were demanding 100 percent guarantee.

The demands that came from them were unbelievable. And we now have three of them left. We lost all but six within 10 days. So if we had to send these Mexicans back, and hire these people, we would be now without workers to harvest the crop.

The Immigration Service—we would probably be either taking this to court, or having the Immigration Service get us an opinion as to how they view this.

I would like to mention two other things in the interest of time.

No. 1—and we've had a crisis with the Labor Department every single year. Last year they informed us we had to recruit Puerto Ricans, and Puerto Ricans are Americans, and no lawyer would advise his client to go to Puerto Rico to do recruiting, because if you do, you subject yourself to the long arm statute in Puerto Rico, which means that they can sue you in Puerto Rico, and they can sue you to death at \$500 a claim, and you've got to go to Puerto Rico to defend it.

And I advised my client to go, notwithstanding, because they sent us a telegram 24 hours before our labor certification was due. They identified by name and social security number 179 workers they said were qualified and ready to come.

Our people went to Puerto Rico; 49 of those 179 showed up for the interview. One didn't stay for the interview. Nobody had been screened. Nobody had identification that showed they were entitled to work.

We interviewed a lot of substitutes. We didn't spare no sermon. We had construction workers, policemen, mailmen, mechanics, everybody that was out of a job from San Juan was sent in as a farm worker. Suffice it to say we offered jobs—of the 48, we offered jobs to 40, and 29 showed up in Danville.

Within 1 week, we had six left. And at the end of the season, we had 2. It was a costly, time-consuming, frustrating experience. The one in Florida was just the same. When the Haitians went back, we did not run to the border and try to get more Mexicans, which we could have done, we went back to the Virginia Employment Commission to see if they could get us some more Americans.

They set up interviews with 49. Twenty-nine showed up, 15 said they would accept jobs. We have one of them left. And this only happened about 3 weeks ago. When people sit here and say that there are plenty American workers that will take the job, we have not had that experience. We have American workers. We have workers, American workers that come back year after year.

I want to touch on one other thing. If I had the time, I could spend 1984 in talking about this. In 1982, before the season started, I called Philadelphia, which is the regional office under whose jurisdiction we are, and asked them what the adverse effect wage rate would be, because we must show that in our job order.

If I called them once over a period of months, I called them eight times. Finally they told me it would be \$3.50. So we put that in the job order, and they approved the job order. That was in the last part of March. August 27, they published in the Federal Register an adverse effect wage rate at \$3.81, and then sent us a telegram and told us we had to pay \$3.81 retroactively to the first day.

Most of our workers were gone. Most of the harvest was over. We couldn't find them if we wanted. And this was done in the face of a court decision by Judge Ricci which had been rendered on September 3, 1982, and the telegram that I got from them telling me I had to pay it retroactively, and they were aware of this, but they were involved in this suit, was dated 6 days later.

But we ultimately prevailed in that case. This is the kind of harassment that we have been subjected to. I'd like to make one mention about the Haitians and then I'll be through.

They informed us that we would have to give Haitians the same preference in employment as we had to give to American citizens, permanent residents of the United States. I asked them why, and they said, well, they have permission to work here indefinitely, or actually permanently.

And I pointed out that they did not, that they fell into three categories. There was a group there, two groups, that were given permission to work coextensive with their status, and the status was that they were illegally in the United States and under exclusionary proceedings, and any day the court might order them out.

The third one, President Carter's group, were in a detention center, and President Carter told them not to disturb them. But their status is not permanently in the United States. They pointed to their regulation, and I'll make a brief comment about that. The regulation defines the U.S. worker as a citizen of the United States, a national, which is the same as the citizen, and I don't know why they separate them. It did not mention permanent residents—does

not mention it. It does include any other alien who is authorized to work permanently in the United States, and under the U.S. Immigration Act there is no such status.

If you're not a permanent resident or not a citizen, there's no status under which you can work permanently in the United States. Having pointed that out to them, they backed away and they said, we will construe our regulation to say if they're in here indefinitely, they're entitled to the same preference.

I pointed out that they were not indefinitely. They said, well, then, if they're here long enough to harvest the crop, we're going to give them the same preference.

Mr. Chairman, I worked with the Senate/House Judiciary Committees as a member of the interdepartmental team that drafted the 1965 amendments and helped write that report. And the report says that the purpose of the labor certification is to ensure that American workers are not displaced.

And if Haitians who are here illegally under exclusion proceedings are Americans, I'll have to study the immigration law all over. What I'm pointing at here is we are under constant harassment in the Labor Department, we are working with a government of men and not laws.

We hope that this provision, which is not, and I referred to, which is not in the Senate bill, you will support, and I hope that we can keep this prohibition in the bill.

That's all I have to say.

The CHAIRMAN. Thank you very much.

Mr. Morrison.

Mr. MORRISON. No questions. Thank you.

The CHAIRMAN. Thank you very much, counselor. We appreciate your information and your concern, and I'm sure the committee will be very happy to look at it.

Mr. MISLER. Thank you very much. Thank you for giving me the opportunity.

The CHAIRMAN. Thank you.

With that, the committee will stand adjourned until 2 p.m. tomorrow afternoon.

[Whereupon, at 6:23 p.m., the committee recessed, to reconvene at 2 p.m., Thursday, June 16, 1983.]

[Submitted material follows:]

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COMMITTEE ON
INTERIOR AND INSULAR
AFFAIRS

COMMITTEE ON
POST OFFICE AND CIVIL
SERVICE

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

STATEMENT, CONGRESSMAN CHARLES PASHAYAN, JR. ON H.R. 1510, THE IMMIGRATION
REFORM AND CONTROL ACT OF 1983, BEFORE THE COMMITTEE ON AGRICULTURE.

MR. CHAIRMAN, I salute you and your Committee for taking the initiative in calling for hearings on the Immigration Reform and Control Act of 1983 and how it impacts on agriculture. I totally agree in your observation that these are difficult and complex issues. The question I pose to you and Members of this Committee is whether or not agricultural needs, both employer and employee, will be fully met under Simpson-Mazzoli. That is the issue which is all-important in these deliberations.

Congress has fostered and will continue to foster domestic agriculture, as indeed it must; but unless there is a work force in place when needed, much of what is grown will never reach the consumer. That work force, which will necessarily be made up of some domestic but mostly foreign workers, must enjoy the basic protections accorded all workers. In my view this should extend to wages, working conditions, and benefits, plus the maximum freedom—the freedom to choose an employer of their liking. The plight of today's undocumented farm worker, who struggles with none of these fundamental economic rights, is horrible.

Indeed the press has verbally and visually shown us terrible examples, stories of undocumented workers being drowned as they fled from Immigration and Naturalization Service Officers, of the tragic deaths of many who were abandoned at or near the border in attempting entry into this country, and

of others who were so fearful of being turned in to Federal authorities that they reluctantly performed onerous and unfair tasks without question.

I readily admit that undocumented workers make up the vast majority of current field workers--estimates range from 50% to 100%. However, I will point out that the average wage in California is above \$4.35 per hour compared to the national average of \$3.52. Indeed, there is documentation by the Western Growers Association that some lettuce workers in California are earning in excess of \$25,000 per year.

The charge often made in the past few years is that the agricultural jobs now being performed by the undocumented foreign workers are jobs being taken from the domestic worker. I do not accept that and the record I think will show that the domestic worker will not necessarily join the transit farm work force in enough numbers despite his unemployment condition.

In fact, efforts have been made at developing a satisfactory domestic work force for agricultural employment. For example, farmers in Fresno County, California, worked for years on a pilot program with the State to develop a domestic work force. It failed miserably. Again, less than a year ago the strawberry growers in southern California actively recruited unemployed domestic workers to harvest a rapidly ripening strawberry crop. The turnout was marginal and the results worse. Some of the unemployed lasted two days on the job, others not even a day. So it failed. Growers of fruits and vegetables throughout this country have tried to meet their needs with domestic workers. They have been unsuccessful, even when wages reach \$20,000 annually. Over time, as the domestic shortfall increased, the dependency on undocumented workers increased to a point where between 65 and 85 percent of the harvesting is done by undocumented workers. So these, too, failed.

Mr. Chairman, in terms of economics, there is much at stake in our developing a system of labor protecting both farmers and workers. I should point out that in the 17 Western Reclamation states, more than \$3.1 billion of hand-harvested fruits and vegetables were produced in 1980. Unharvested, those crops are valueless to grower and consumer alike. I need not explain to this Committee that once a farmer invests in his crop, his only way of recouping that initial investment plus whatever profit he may realize is the sale of that crop, and unless it shall be harvested off the tree or vine and moved into the food distribution chain, it will become a liability on his ledger. The irrigated crops that are labor-intensive include asparagus, fresh and processing beans, broccoli, cauliflower, celery, fresh and processing corn, cucumbers, kale, melons, onions and garlic, fresh and processing peas, peppers, fresh and canning tomatoes, apples, apricots, cherries, all varieties of citrus, fresh grapes, wine grapes, raisins, olives, peaches, pears, plums, nectarines and nursery crops.

Mr. Chairman, today, without even H.R. 1510 or another program temporarily to admit foreign workers, we have the H-2 program. The law states "... (ii) who is coming temporarily to the United States to perform other temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country...."

A May, 1980 report entitled "Nonimmigrant Workers In The U.S.: Current Trends And Future Implication," distributed by the U.S. Department of Labor, noted that the H-2 program was a diminutive version of the "bracero program" whereby the workers are bonded to specific employers.

Nothing in H.R. 1510 truly alters this.

Regulations by the Department of the Labor created two types of workers and two types of employers. In agriculture—only in agriculture—the Labor

Department required that housing, meals, and transportation be supplied by farmers. And yet the other categories of H-2 workers and their employers do not have this requirement imposed. This is grossly unfair to farmers. Moreover, it is economically impossible for them to construct housing adequate to State and County standards, to be occupied only a few weeks a year by foreign workers. Farmers simply cannot afford to fulfill the requirement.

The H-2 program is therefore useless to farmers, especially farmers in Western agriculture.

Today we visit H.R. 1510, the Immigration Reform and Control Act of 1983. Mr. Chairman, you have asked that we look most carefully at the difficult and complex issues this major legislative initiative poses for agriculture. Therefore, the all-important question involves providing an adequately protected workforce made up of domestic and foreign individuals.

While I admire the efforts put into the development of H.R. 1510 by the Committee on the Judiciary, I must in final analysis state that in its dealings with agriculture it is short-sighted. Indeed, Simpson-Mazzoli is most short-sighted in respect to labor-intensive crops, which ripen according to the dictates of weather, not by a schedule propounded by bureaucratic regulation or Congressional fiat. This dependence upon weather conditions alone makes agriculture radically different from commercial business or industry, and consequently makes its labor need as different. H.R. 1510 provides no emergency provision to take care of the unique harvest problem that requires ready, willing, and able workers in the fields immediately to save the crop for market. It continues the concept of foreign workers being bonded to employers. It provides no provision for foreign workers who do not wish to become U.S. citizens, but who do like to return from their native

country to work in this country. In short, the alternative offered in H.R. 1510 is the institutional H-2 program that is a product of Eastern agriculture. Its application to Western agriculture has limited potential. I urge you to consider seriously the establishment of a two-tract system. It has an appeal that protects this nation's ability to meet the demands for food and fiber, a demand that is worldwide.

Therefore, on Thursday, June 9, I introduced H.R. 3270, a bill entitled "The Seasonal Agricultural Foreign Worker Program Act of 1983." It is a result of my own thinking and consultation with a wide variety of farmers in my district over the last three years. I submit H.R. 3270 to you and your Committee, Mr. Chairman, and I hope that you will find it useful in your deliberations on this most complex issue.

In my opinion, the Seasonal Agricultural Foreign Worker Program provides options not now available in H.R. 1510, and presents them for the foreign laborer as well as the farmer.

Mr. Chairman, let me emphasize that the worker's ability to be mobile in working for an employer of his choice completely differentiates H.R. 3270 from the H-2 program. Under the H-2 program, a worker was under explicit contract with one certain employer, a situation that could give the employer virtual economic life-or-death power over the worker. So there has been exploitation. But, once again, under H.R. 3270, no such contract exists by law, and the worker is free to quit his employer for any reason at all; and in exercising this economic freedom, he shall not be thrust out of the country.

As developed, the legislation requires agricultural interests to obtain certification to hire nonimmigrant foreign workers, from the Attorney General in cooperation with the Secretaries of Agriculture and Labor. This meets the

growers' needs by allowing sufficient numbers of foreign workers into this country to perform necessary agricultural chores, but only if there is an insufficient domestic work force available.

The legislative idea also requires the Attorney General to certify the need for additional workers under extraordinary circumstances within 72 hours of receiving a grower application. This would be used in the case of rains at or near harvest, or in a situation when a prolonged period of heat has brought crops to a much faster maturity, which requires accelerated harvesting.

Other provisions include the exclusive use of either the program proposed in the Seasonal Agricultural Foreign Worker Act or the existing H-2 program, but not both; withholding of an equivalent to Social Security deductions to be remitted to the worker upon return to his home country; establishment of a bilateral advisory commission between the United States and the labor source countries; and a semiannual reporting requirement to Congress on any changes that might be needed.

Professor Wayne Cornelius, director of the University of California at San Diego's Center for U.S.-Mexican Studies, said on June 10 that "the flow of labor from Mexico is still being regulated, not by government, but by the marketplace." He opined that H.R. 1510 will not stem the flow of undocumented workers because the economic incentive for the Mexican worker is too great. He said a Mexican worker in an unskilled job in this country can earn as much in 40 minutes as he could in an entire day in Mexico.

Today we hardly have our fingers on the pulse of the issue. In my view social engineering in providing food and fiber to this nation and the world should be done most carefully. When it comes to the basic needs of people, I should hope that if we are to err, we err in favor of the ability of our

farmers to provide a plentitude of food and fiber.

I know some will question: Why do we need something other than H-2? On the East Coast H-2 has in an evolutionary process over the past forty years become a practical and necessary tool, and I do support modernization of the H-2 program. But in the West, we have come to depend on the market place. Foreign workers did not pay too much attention to the mandates of the U.S. Congress. They came any way, risking apprehension for a way of life that was alluring and economically regarding. That these people are abused is as much a subject for us today as any, and the record has not been very satisfactory on either side of the issue. The word "coyote" has taken on a new meaning along the border states, as did the charge of "servitude" for those who do find employment.

The Seasonal Agricultural Foreign Worker Act of 1983 gets away from these problems. Farmers have relied on a leaky border, and so have many of their workers. So there is much natural dependence involved. Let us build on it, not tear it down.

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6/14 Draft (based on H.R. 372#)

Amendment to H.R. 1510, As Reported by the Committee on the
Judiciary

Recommended by Mr. Pashayan for consideration by the
Committee on Agriculture

Page 63, beginning on line 3, strike out ``by striking out`` and all that follows through the comma on line 5.

Page 63, line 6, strike out ``subparagraph`` and insert in lieu thereof ``subparagraphs``.

Page 63, strike out line 14 and insert in lieu thereof the following:

- 1 section 214(e); or
- 2 `` (P) an alien having a residence in a foreign
- 3 country which he has no intention of abandoning who is
- 4 coming to the United States for a period of not longer
- 5 than 11 consecutive months to perform services or labor
- 6 in seasonal agricultural employment (as defined in
- 7 section 3(3) of the Migrant and Seasonal Agricultural
- 8 Worker Protection Act). ``.

Page 63, line 22, strike out ``or``.

Page 64, line 2, strike out the period and insert in lieu thereof `` , or ``.

Page 64, after line 2 insert the following:

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1 “(3) under section 101(a)(15)(P) during the five-
 2 year period beginning on the most recent date (if any)
 3 on which the alien violated (as determined by the
 4 Attorney General) a term or condition of a previous
 5 admission as such a nonimmigrant.

Page 70, line 17, strike out “subsection” and insert
 in lieu thereof “subsections”.

Page 76, line 4, strike out all that follows the first
 period..

Page 76, after line 4, insert the following:

6 “(f)(1)(A) The Attorney General, in consultation with
 7 the Secretary of Agriculture and the Secretary of Labor,
 8 shall by regulation establish a program (hereinafter in this
 9 subsection referred to as ‘the program’) for the admission
 10 into the United States of nonimmigrants described in section
 11 101(a)(15)(P). The program shall include the imposition of
 12 monthly and annual numerical limitations, established under
 13 paragraph (2)(B), on the issuance of nonimmigrant visas for
 14 such nonimmigrants by agricultural employment region. These
 15 visas shall be made available subject to such limitations to
 16 aliens described in section 101(a)(15)(P) in accordance with
 17 the preference system established under paragraph (2)(C).

18 “(B) Except as provided pursuant to paragraph (3)--

19 “(i) aliens shall not be required to obtain any
 20 petition from any prospective employer within the United

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1 States in order to obtain a nonimmigrant visa under the
2 program, and

3 `` (11) such a nonimmigrant visa shall not limit the
4 geographical area (other than by regions established
5 under subparagraph (C)) within which an alien may be
6 employed or limit the type of agricultural employment
7 the alien may perform.

8 `` (C) For purposes of administering the program, the
9 Attorney General shall designate not more than 10
10 agricultural employment regions within the United States.

11 `` (2)(A) Each person who employs individuals to perform
12 agricultural employment (including an association of such
13 persons and a person who contracts for the performance of
14 such employment) may submit to the Attorney General, at such
15 time and in such manner as the Attorney General specifies, a
16 petition specifying, for each month concerned and for the
17 agricultural employment region in which the person is
18 located, (i) the total number of agricultural workers
19 required in each month, (ii) the type of agricultural work
20 required to be performed by these workers, (iii) the total
21 number of domestic agricultural workers anticipated to be
22 able, willing, qualified, and available to perform such
23 work, and (iv) the number and labor qualifications of any
24 foreign seasonal agricultural workers required to perform
25 the balance of such work. The person may also include a

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1 statement indicating a preference as to country of
2 nationality of aliens (or names of particular aliens)
3 desired to perform labor in any such month.

4 “(B)(1) Based upon such petitions, taking into
5 consideration the historical employment needs of
6 agricultural employers and the availability of domestic
7 agricultural labor, and after consultation with the
8 Secretary of Agriculture and the Secretary of Labor, the
9 Attorney General shall establish a numerical limitation, by
10 month and by agricultural employment region, on the issuance
11 of nonimmigrant visas to aliens described in section
12 101(a)(15)(P).

13 “(11) If an agricultural employer (or association or
14 representative thereof) establishes that extraordinary and
15 unusual circumstance beyond the employer's control has
16 resulted in a significant change in the employer's need for
17 seasonal agricultural workers or in the availability of
18 domestic workers who are able, willing, and qualified to
19 perform seasonal agricultural employment, the employer may
20 apply to the Attorney General (in such form and manner as
21 the Attorney General shall provide) for an increase in the
22 numerical limitations otherwise established under clause (1)
23 to accommodate such emergency need. The Attorney General
24 shall make a determination on such an application within 72
25 hours of the date the application is completed. To the

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1 extent the application is approved, the Attorney General
2 shall provide for an appropriate increase in the appropriate
3 numerical limitation.

4 “(C) Nonimmigrant aliens who are subject to the
5 numerical limitations specified in this paragraph shall be
6 allotted nonimmigrant visas as follows:

7 “(1) Visas shall first be made available to
8 qualified nonimmigrants specifically identified in
9 petitions submitted under paragraph (2)(A).

10 “(ii) Visas shall next be made available to
11 qualified nonimmigrants who have previously been
12 employed in seasonal agricultural employment in the
13 United States, providing priority in consideration among
14 such aliens in the order of the length of time in which
15 they were so employed.

16 “(iii) The remaining visas shall be made available
17 to other qualified nonimmigrants strictly in the
18 chronological order in which they qualify. Waiting lists
19 of applicants shall be maintained in accordance with
20 regulations prescribed by the Secretary of State.

21 A spouse or child of such a nonimmigrant is not entitled to
22 a visa or such status by virtue of such relationship,
23 whether or not accompanying or following to join the
24 nonimmigrant, but may be provided the same status as such a
25 nonimmigrant if the spouse or child also is a qualified

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1 nonimmigrant to perform season agricultural employment.

2 “(3)(A)(i) No person is eligible to employ a
3 nonimmigrant described in section 101(a)(15)(P) unless the
4 person (or a person or association representing the person)
5 applies to the Attorney General to employ such
6 nonimmigrants. The Attorney General shall approve such an
7 application unless he determines, after opportunity for a
8 hearing, that the employer--

9 “(I) has knowingly discriminated in employment
10 against domestic workers,

11 “(II) has knowingly hired aliens not permitted
12 under law to be so employed,

13 “(III) has employed a nonimmigrant described in
14 section 101(a)(15)(H)(ii)(a) during a previous period
15 during which the employer had an application approved
16 under this subsection, or

17 “(IV) has failed to recruit in the area of intended
18 employment willing and qualified domestic agricultural
19 workers to perform agricultural employment (until the
20 date any nonimmigrants under section 101(a)(15)(P)
21 admitted to the United States to perform such employment
22 report to work).

23 An employer, for any period in which the employer has an
24 application approved under this paragraph, is not eligible
25 to petition for, or otherwise employ, a nonimmigrant

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1 described in section 101(a)(15)(H)(i)(a). An employer may
 2 not be disqualified under subclause (I), (II), (III), or
 3 (IV) of this clause for a period of longer than 5 years with
 4 respect to an action described in that clause.

5 “(i) An employer shall not be considered to have
 6 violated clause (i)(II) with respect to an alien if the
 7 alien, at the time of employment, made a written
 8 representation to the employer that the alien was a citizen
 9 of the United States or an alien lawfully admitted for
 10 permanent residence or has presented an appropriate
 11 identifier or identifiers showing legal admittance into the
 12 United States under this subsection to perform such
 13 employment.

14 “(iii) An employer who is denied eligibility to
 15 participate in the program under clause (i) is entitled to
 16 an expedited review of the determination by the Attorney
 17 General.

18 “(B) If an employer has participated under the program
 19 and--

20 “(i) has taken an action described in subclause
 21 (I), (II), (III), (IV) of subparagraph (A)(i),

22 “(ii) has employed a nonimmigrant described in
 23 section 101(a)(15)(P) for a job opportunity made vacant
 24 as a result of a labor dispute,

25 “(iii) has employed (or petitioned for) a

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1 nonimmigrant described in section 101(a)(15)(H)(i)(a)
2 to perform seasonal agricultural employment at the time
3 when the employer had an application approved under this
4 paragraph,

5 "(iv) has employed a nonimmigrant described in
6 section 101(a)(15)(P) for services other than seasonal
7 agricultural services, or

8 "(v) failed to pay applicable minimum wage (or
9 piece rates sufficient to constitute under law such
10 minimum wage),

11 the Attorney General may, in addition to disqualifying the
12 employer from participation in the program under
13 subparagraph (A), provide for an appropriate civil monetary
14 penalty. As used in this subparagraph, the term 'labor
15 dispute' means a lawful strike by a majority of all bona
16 fide agricultural employees of the employer, or a lockout by
17 the employer on account of a good faith dispute over wages,
18 hours, or working conditions, and such a dispute shall be
19 deemed to have ended when the term of employment ends or
20 when less than a majority of the employees of the employer
21 remain on strike.

22 "(C)(i) It is unlawful for a person or other entity to
23 hire, or recruit or refer, for employment in the United
24 States a nonimmigrant alien unless the person or entity has
25 an application approved under paragraph (3) with respect to

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1 the hiring of the alien.

2 “(11) A person or entity that violates clause (1) shall
3 be subject--

4 “(I) in the case of a person or entity which has
5 not previously been determined (after opportunity for
6 judicial review) to have violated such clause, to a
7 civil penalty of up to \$1,000 for each alien so hired,

8 “(II) in the case of a person or entity which has
9 previously been determined (after opportunity for
10 judicial review) to have violated such clause in only
11 one occasion, to a civil penalty of up to \$2,000 for
12 each alien so hired, or

13 “(III) in the case of a person or entity which has
14 previously been determined (after opportunity for
15 judicial review) to have violated such clause in more
16 than one occasion, to a civil penalty of up to \$3,000
17 for each alien so hired.

18 “(4)(A) Any alien who obtains a nonimmigrant visa under
19 the program and who violates--

20 “(i) any restriction with respect to the period of
21 time for which the alien is allowed to remain in the
22 United States, or

23 “(ii) any restriction imposed under paragraph (3),
24 shall be ineligible to obtain any nonimmigrant visa under
25 the program during the 5-year period beginning on the date

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1 such violation occurs. Any alien who enters the United
2 States unlawfully after the date the program becomes
3 effective, is ineligible to obtain a nonimmigrant visa under
4 the program during the five-year period beginning on the
5 date such entry occurred.

6 “(B) An alien admitted as a nonimmigrant under the
7 program is not eligible for any program of financial
8 assistance under Federal law (whether through grant, loan,
9 guarantee, or otherwise) on the basis of financial need, as
10 such programs are identified by the Attorney General in
11 consultation with other appropriate heads of the various
12 departments and agencies of Government.

13 “(5) The Secretary of State is authorized to take such
14 steps as may be necessary in order to expand and establish
15 consulates of foreign countries from which aliens are likely
16 to apply for nonimmigrant status under the program.

17 “(6) The Attorney General shall report to Congress
18 semiannually regarding the program. Each such report shall
19 include a statement of the number of nonimmigrant visas
20 issued under the program, an evaluation of the effectiveness
21 of the program, a description of any problems related to the
22 enforcement of the program, and any recommendations for
23 legislation relating to the program.

24 “(7) The provisions of this subsection preempt any
25 State or local law on the same subject.”.

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Page 76, line 11, strike out `` (d) The `` and insert in lieu thereof ``Except as provided under paragraph (2), the``.

Page 76, after line 18, insert the following:

- 1 (2)(A) The Attorney General, in consultation with the
2 Secretary of Agriculture and the Secretary of State, shall
3 promulgate all regulations implementing the amendments made
4 by this section relating to the program under section 214(f)
5 of the Immigration and Nationality Act. Notwithstanding any
6 other provision of law, final regulations implementing such
7 amendments shall first be issued, on an interim or other
8 basis, not later than the first day of the seventh month
9 beginning after the date of the enactment of this Act.
- 10 (B) In the case of an employer which has participated in
11 the seasonal agricultural worker program under section
12 214(f) of the Immigration and Nationality Act and which has
13 taken an action described in paragraph (3)(A)(i)(II) of such
14 section which, the Attorney General has reason to believe,
15 would otherwise make the employer subject to a civil penalty
16 under paragraph (3)(B) of such section and in the case of an
17 employer which has hired an alien which, the Attorney
18 General has reason to believe, would otherwise make the
19 employer subject to a civil penalty under paragraph
20 (3)(C)(ii) of such section, if--
- 21 (i) such action occurs during the one-year period

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1 beginning on the date of the enactment of this Act, the
 2 Attorney General shall notify the employer of such
 3 belief and shall not conduct any proceeding or impose
 4 any penalty with respect to such action, or

5 (ii) such action is the first such action occurring
 6 during the subsequent one-year period, the Attorney
 7 General shall provide a warning to the employer
 8 concerning the penalties which can subsequently be
 9 imposed but shall not conduct any proceeding or impose
 10 any penalty with respect to that specific action.

Page 77, line 13, insert ``(1)'' after ``(f)''.

Page 77, after line 20, insert the following new
 paragraph:

11 (2) It is the sense of Congress that the President
 12 should negotiate with representatives of the governments of
 13 labor source countries to establish bilateral advisory
 14 commissions in order to consult with and advise the Attorney
 15 General regarding--

16 (A) the regulations to be promulgated,

17 (B) the monthly and annual numerical limitations to
 18 be established,

19 (C) the entry, and preference, and visa issuance
 20 systems to be established, and

21 (D) problems arising under the program established,
 22 under section 214(f) of the Immigration and Nationality Act.

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Page 77, after line 24, insert the following new subsections:

1 (h)(1) The first sentence of section 204(a) (8 U.S.C.
2 1154(a)) is amended by inserting before the period the
3 following: ``', except that no petition for a preference
4 immigrant under section 203(a)(3) or 203(a)(6) may be filed
5 respecting an alien who is a nonimmigrant described in
6 section 101(a)(15)(P)''.

7 (2) Section 212(a) (8 U.S.C. 1182(a)) is amended by
8 striking out the period at the end of paragraph (33) and
9 inserting in lieu thereof a semicolon and by adding at the
10 end the following new paragraph:

11 ``'(34) Aliens admitted as nonimmigrants under
12 section 101(a)(15)(P) who fail to be continuously
13 employed or actively seeking employment in agricultural
14 labor or services in accordance with the usual and
15 customary employment patterns and practices.''.
16

17 (i)(1) Section 201(g) of the Social Security Act (42
U.S.C. 401(g)) is amended--

18 (A) by striking out ``paragraph'' in the fourth
19 sentence of paragraph (2) and inserting in lieu thereof
20 ``subparagraph'';

21 (B) by inserting ``(A)'' after ``(2)'' in paragraph
22 (2);

23 (C) by adding at the end of paragraph (2) the

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1 following new subparagraph:

2 "(B)(1)(I) The Managing Trustee is directed to pay from
3 time to time from the Trust Funds into the Treasury the
4 amount estimated by him as taxes imposed under section
5 3101(a) of the Internal Revenue Code of 1954 (relating to
6 the OASDI tax on employees) with respect to the wages of
7 nonimmigrant aliens employed under the seasonal agricultural
8 worker program established under section 214(f) of the
9 Immigration and Nationality Act. The payments by the
10 Managing Trustee shall be covered into the Treasury to the
11 credit of the Department of State for the making of lump-sum
12 benefit payments described in section 202(y) to such
13 nonimmigrant aliens.

14 "(II) The Managing Trustee is directed to pay from time
15 to time from the Trust Funds into the Treasury the amount
16 estimated by him as taxes imposed under sections 3111(a) and
17 3301(a) of the Internal Revenue Code of 1954 (relating to
18 the OASDI and unemployment taxes on employers) with respect
19 to the wages of nonimmigrant aliens employed under the
20 seasonal agricultural worker program established under
21 section 214(f) of the Immigration and Nationality Act. The
22 payments by the Managing Trustee shall be covered into the
23 Treasury to the credit of the Immigration and Naturalization
24 Service for the costs of administration and enforcement
25 respecting such program.

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1 “(11) The amounts under clause (1) shall be determined
 2 on the basis of the records of wages established and
 3 maintained by the Secretary of Health and Human Services in
 4 accordance with the wages reported to the Secretary of the
 5 Treasury pursuant to subtitle F of the Internal Revenue Code
 6 of 1954 and reports of the Secretary of State, and the
 7 Secretary and the Secretary of State shall furnish the
 8 Managing Trustee such information as may be required by the
 9 Trustee for such purpose.

10 “(11) Payments pursuant to clause (1) shall be made
 11 from the Federal Old-Age and Survivors Insurance Trust Fund
 12 and the Federal Disability Insurance Trust Fund in the ratio
 13 in which amounts were appropriated to such Trust Funds under
 14 clause (3) of subsection (a) and clause (1) of subsection
 15 (b).”;

16 (D) by striking out “(2)” in paragraph (3) and
 17 inserting in lieu thereof “(2)(A)”; and

18 (E) by inserting “or paragraph (2)(B)” in
 19 paragraph (3) after “either such paragraph”.

20 (2) Section 1817(f) of such Act (42 U.S.C. 1395i(f)) is
 21 amended--

22 (A) by inserting “(A)” after “(1)” in paragraph
 23 (1);

24 (B) by adding at the end of paragraph (1) the
 25 following new subparagraph;

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1 “(B)(1)(I) The Managing Trustee is directed to pay from
2 time to time from the Trust Fund into the Treasury the
3 amount estimated by him as taxes imposed under section
4 3101(b) of the Internal Revenue Code of 1954 (relating to
5 the hospital insurance tax on employees) with respect to the
6 wages of nonimmigrant aliens employed under the seasonal
7 agricultural worker program established under section 214(f)
8 of the Immigration and Nationality Act. The payments by the
9 Managing Trustee shall be covered into the Treasury to the
10 credit of the Department of State for the making of lump-sum
11 benefit payments described in section 202(y) to such
12 nonimmigrant aliens.

13 “(II) The Managing Trustee is directed to pay from time
14 to time from the Trust Fund into the Treasury the amount
15 estimated by him as taxes imposed under section 3111(b) of
16 the Internal Revenue Code of 1954 (relating to the hospital
17 insurance tax on employers) with respect to the wages of
18 nonimmigrant aliens employed under the seasonal agricultural
19 worker program established under section 214(f) of the
20 Immigration and Nationality Act. The payments by the
21 Managing Trustee shall be covered into the Treasury to the
22 credit of the Immigration and Naturalization Service for the
23 costs of administration and enforcement respecting such
24 program.

25 “(11) The amounts under clause (i) shall be determined

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1 on the basis of the records of wages established and
 2 maintained by the Secretary of Health and Human Services in
 3 accordance with the wages reported to the Secretary of the
 4 Treasury pursuant to subtitle F of the Internal Revenue Code
 5 of 1954 and reports of the Secretary of State, and the
 6 Secretary and the Secretary of State shall furnish the
 7 Managing Trustee such information as may be required by the
 8 Trustee for such purpose.'';

9 (C) by striking out "(1)" in paragraph (2) and
 10 inserting in lieu thereof "(1)(A)"; and

11 (D) by inserting "or paragraph (1)(B)" after
 12 "under such paragraph".

13 (D) Section 202 of such Act (42 U.S.C. 402) is amended
 14 by adding at the end thereof the following new subsection:

15 "Lump-Sum Benefits for Certain Nonimmigrant Agricultural
 16 Workers

17 "(y)(1) Upon the return of an alien nonimmigrant
 18 described in section 101(a)(15)(P) of the Immigration and
 19 Nationality Act to the alien's residence in a foreign
 20 country after the performance of seasonal agricultural
 21 employment in the United States under the program
 22 established under section 214(f) of such Act, an amount
 23 equal to the amount of the taxes imposed under section 3101
 24 of the Internal Revenue Code of 1954 on wages of such alien
 25 for the performance of such employment shall be paid by the

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1 Secretary of State in a lump sum (without interest) to such
 2 alien if it is demonstrated to the satisfaction of the
 3 Secretary, either in an application for such benefit filed
 4 after his return or by certification under paragraph (3),
 5 that he has not violated any restriction referred to in
 6 section 214(f)(4) of the Immigration and Nationality Act and
 7 has no intention of abandoning his residence in that
 8 country.

9 “(2) An application by an alien for a benefit under
 10 this subsection may be made only at the consulate of the
 11 United States in such foreign country nearest the alien’s
 12 residence and payment of such benefit may be made to such
 13 alien only at such consulate.

14 “(3) The Secretary of State and the Secretary of the
 15 Treasury shall each, upon written request of the Secretary,
 16 make certification to the Secretary with respect to any
 17 matter, determinable for the Secretary by the Secretary of
 18 State or the Secretary of the Treasury, as the case may be,
 19 under this subsection, which the Secretary finds necessary
 20 in administering this subsection.”.

21 (c) Section 210(a) of such Act (42 U.S.C. 410(a)) is
 22 amended--

23 (1) in paragraph (19), by striking out “or,”;

24 (2) in paragraph (20), by striking out

25 “individuals.” and inserting in lieu thereof

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1 ``individuals; or``; and

2 (3) by adding at the end thereof the following new
3 paragraph:

4 `` (21) Seasonal agricultural service performed by a
5 nonimmigrant alien described in section 101(a)(15)(P) of
6 the Immigration and Nationality Act in the United States
7 under the program established under section 214(f) of
8 such Act.``.

9 (d)(1) Section 3121(a)(8)(B) of the Internal Revenue
10 Code of 1954 is amended by inserting before the semicolon at
11 the end the following: `` , except that clauses (i) and (ii)
12 shall not apply to payments to nonimmigrants described in
13 section 101(a)(15)(P) of the Immigration and Nationality
14 Act``.

15 (2) Section 3121(d)(1) of such Code is amended by
16 inserting `` (other than as a nonimmigrant under section
17 101(a)(15)(P) of the Immigration and Nationality Act)``
18 after ``agricultural labor``.

Page 81, line 21, strike out ``or (H)`` and insert in
lieu thereof `` , (H), or (P)``.

Page 81, line 9, strike out ``or (O)`` and insert in
lieu thereof `` (O), or (P)``.

Page 89, line 24, insert ``or (P)`` after
``101(a)(15)(O)``.

STATEMENT OF
CONGRESSMAN SID MORRISON
BEFORE THE
HOUSE AGRICULTURE COMMITTEE
IMMIGRATION REFORM AND CONTROL ACT
JUNE 15, 1983

Mr. Chairman: I want to thank you for requesting sequential referral of the Immigration Reform and Control Act and for holding this hearing today. Agriculture has special needs which will not be satisfied with the current version of this legislation and it is necessary for all sectors of the industry to have the opportunity to express what special requirements they may have. The Judiciary Committee has made several improvements over last year's bill, but it still is not workable in my part of the country.

I know my colleagues on this committee are aware of the overall problems which could result from enactment of this bill so the best use of my time would be to concentrate on the unique situation in Washington State. The crops grown in my district are diversified and include many that are labor intensive. While many farm procedures have been mechanized, most fruit and a number of vegetable harvests depend on human hands and minds to determine maturity and to protect quality. In other words, hand picked. Add the dimension of highly perishable products, with short, weather-dependent harvests, blend in a highly competitive world-wide market, and you have a most difficult situation.

Washington ranks number 1 in the country in the production of sweet cherries. Right now the sweet cherries are in the beginning stages of harvest and a rainstorm could wipe out the entire crop overnight. Our family team farm has seen our cherry crop destroyed

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the past two years; one year by frost and the following by rain. Overnight a farmer's need for several hundred H-2 workers could diminish to just a handful and we need more flexibility built into the regulations to accommodate such an unavoidable alteration in plans. Having to apply for certified workers 50 days in advance does not take into account the various extraneous factors that come into play, including a competitive market, rain, frost, drought, hail and above normal temperatures, over which the farmer has no control and would adversely affect timing for a harvest. A delay of a few days or several hours in extreme temperatures could result in a devastated crop.

The gamble in our type of farming is reflected in the fact that the average fruit grower in Washington State has fewer than 50 acres. These small family farmers have always depended on temporary, short-term labor. Since the State of Washington is far removed from the normal migrant work stream, agricultural wages in the Northwest are among the highest in the nation. Workers are well compensated, most are satisfied and they return to the same farms year after year. Local workers normally dominate the full time, or nearly year-round jobs in packing, processing, packaging, or transporting these various commodities. In other words, without temporary harvest help, the basis for year-round work is lost.

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In recent years, Hispanic workers have increasingly filled this need for short-term specialty harvests. These workers live in the local area or come from the Southwest, attracted by piece rates that reward aggressive work habits. There is no argument that, since the termination of the Bracero program, this migrant stream has been joined by an unknown percentage of undocumented workers. This pattern evolved unintentionally over a long period of time and it's unjust to close the door rapidly on a program which has been followed for years. Washington State law prohibits employers from making discriminatory inquiries into a worker's nationality or eligibility to work.

The specialty work in my district begins in March with asparagus cutting and ends in October with the final phase of apple harvest. In between we have peach thinning, hop stringing, cherry harvest, hand thinning of apples followed by the peach, pear, apple, grape, and hop harvests. The H-2 program is effective in areas of the country that need a certain number of workers for a definite period of time. But, in the seven month period of time that I described earlier, there are weeks when only a few workers would suffice, immediately followed by an intense demand for labor. It is not feasible to require the farmer to keep hundreds of workers on the payroll, pay for housing and provide meals if there is no requirement for labor for days or weeks.

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I realize that an amendment has been accepted by the Judiciary Committee which makes the verification and record keeping optional until the INS finds an illegal alien on an employer's payroll. With a large number of temporary employees on the premise, my farmers need the protection of those records to prove the legality of the workers they employ. That change is helpful only to the small business who may personally know his employees and has no doubt that they are in this country legally.

I will be introducing an amendment which will at least alleviate some of the burdensome paperwork from the farmer. If the Kindness amendment survives the conference, the record keeping requirement would be optional for some, and mandated for others. Under no circumstances do I believe an employer should have to record the legality of workers every time they come back for additional employment. As I stated earlier, there are nearly continuous harvests occurring throughout the Pacific Northwest and most farmers grow several different crops. Some of the workers pick cherries for one farmer, go to another in the area and pick peaches and return to the original farm in the fall to pick apples. I believe that it is totally unnecessary for that farmer to have to redocument the legality of the same worker each and every time he returns for employment. My amendment

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would eliminate the requirements for filling out duplicating paperwork under certain restrictive conditions.

The housing allowance amendment accepted by the House Judiciary Committee which substitutes payment in lieu of the actual furnishing of housing accommodations is a right step in the direction of flexibility of the H-2 program. There is very little housing already standing on the west coast that satisfies the rigid requirements of H-2 dwellings and it would be a prohibitive proposition for individual farmers to construct housing on their property for a short harvest which can be as little as several days in duration. This provision is not contained in the Senate version of the bill and I urge my colleagues to see that it is retained on the House floor and in conference. Just the complexity of obtaining zoning permission for farm housing can consume years.

One of the other major differences between the two bills lies in the agricultural transition program. Although I have been advocating a phase-in of sanctions and H-2, if we must have it at all, requiring an immediate coverage of all transitional workers under H-2 working conditions would negate any advantage of having the transition program. The H-2 program now in place has been bogged down with redtape and subject to uneconomic requirements to the point that it is unworkable for a large short-term labor need. The Senate version truly permits agricultural employers a period of time to break away from the

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employment of undocumented workers to the employment of U.S. citizens, legalized residents, or H-2 workers, and we should work to ensure that this language is retained in the final version of the legislation.

Mr. Chairman, there is no question in my mind that new immigration policy is necessary. The hours of meetings and hearings I have attended convince me that something must be done. But, the bill before us does not provide enforceable or fair answers. I have doubts if employer sanctions will work in our country any more effectively than in the 19 countries where such laws are in force and have proven to be unsuccessful. The bill is unfair because it will result in discrimination and it is not fair to impose an additional maze of redtape on employers because government agencies have failed to halt the flow of illegal immigrants. For my district, this legislation fits neither the needs of the Hispanic community nor the employers. I realize the political realities and the push for passage of this legislation so I feel it's essential that we work together to ensure that the improvements which have already been added to the bill are not discarded on the floor or in conference. By amendment, I trust the legislative process can consider the special regional needs of the Northwest.

STATEMENT OF
RICHARD L. MARTIN, ASSISTANT MANAGER
WASHINGTON ASPARAGUS GROWERS ASSOCIATION

The Washington State Asparagus Growers Association appreciates this opportunity. Members of our Association live and farm in South Central Washington State and North Central Oregon. The Association was formed in 1957 and has represented 85 - 90 percent of the asparagus growers in our region since that time. The average acreage per farmer has grown from about 20 acres to the current 42 acres per farmer. Currently, our area has 33,000 acres of asparagus, making it the largest growing area in the world. We sincerely hope that the effects of this legislation will not cause our industry to decline.

Asparagus is a labor intensive crop. The consequences of this legislation will without a doubt either positively or negatively affect our industry. This year, area growers have employed approximately 11,000 persons in the harvest. Each acre is harvested for about 60 days requiring about four million man-hours; another 1 1/2 million man-hours are required to pack or process that asparagus. Approximately 90 percent of those workers are Hispanic and about one-third are females. We estimate that one-third of the workers are local and two-thirds are migrant. It is impossible to know how many might be illegal. Most of the local workers have lived in the area for years. Many have wives, children and homes.

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Of those who are undocumented we can offer no guess as to how many will be able to establish residency. I do believe that because of their long-time fear of I.N.S., a lot of effort will be required to get them to come forward to apply for legal status. The structure for this is in the proposed legislation and if properly instituted, should help.

Growers are particularly concerned about the loss of a dependable, stable labor supply. At this time we do not have any idea of how many workers will return next year, and if they do how many will have documentation. Further, we do not know how many will choose to remain in agriculture.

In the Pacific Northwest, growers have never used the H-2 worker program. Until experience dictates otherwise, we are concerned that there are many facets of the H-2 program that will not work in our area. We hope, if this legislation passes, that Congress will remain concerned and ready to consider options to the temporary farmworker program. If it does not, then we may well see labor intensive agricultural commodities go the way of the steel industry.

Del Monte Corporation, a subsidiary of R.J. Reynolds Industries recently signed an agreement with the People's Republic of China that outlines the possibility of a joint

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food production and marketing agreement. As part of that agreement, Del Monte and Chinese technicians this spring planted an experimental farm near Shanghai with the company's high-yield varieties of tomatoes, asparagus, peas and corn. Should the harvest prove fruitful, further discussions will be held concerning processing facilities. Del Monte processes approximately 8 million pounds of asparagus in Washington State. The loss of that facility to an area where labor is readily available would be tragic.

We believe that the consequences of this legislation are monumental. Certainly our immigration laws need revision. We can only hope that the effects are not so far reaching as to destroy this country's vital agricultural industry.

This concludes my testimony. I will be available for questions when appropriate.

Thank you.

Submitted by:

James Matson
Washington State Horticultural Assn.
and Matson Fruit Company
Selah, Washington

Christian E. Schlect
President
Northwest Horticultural Council
Yakima, Washington

IDENTIFICATION OF PARTIES

- A. The Washington State Horticultural Association, headquartered in Wenatchee, Washington, represents some 3,200 fruit growers within the state of Washington. Its business address is P.O. Box 136, Wenatchee, Washington 98801. Its telephone number is 509/662-2067. Jim Matson has been chosen to represent the views of his fellow members of the Association on immigration reform issues before Congress. Mr. Matson is a partner in a family owned and operated apple orchard and packing plant located near Selah, Washington. The business address of Matson Fruit Company is P.O. Box 307, Selah, Washington 98942 and its telephone number is 509/697-7100.
- B. The Northwest Horticultural Council represents, through its member associations, virtually every grower and shipper of deciduous tree fruits in Oregon and Washington. A brief description of the Council is attached to the end of this statement for purposes of identification.

STATEMENTDescription of Industry

Oregon and Washington are major producers of deciduous tree fruits. Approximately 190,000 acres are devoted to tree fruit production in Washington alone. The estimated FOB value of the fresh and processed apples, pears, cherries, peaches, apricots, prunes, plums and nectarines in Washington is \$800 million dollars. As this fruit moves its way from the grower's orchard to the ultimate consumer's table it uses packaging materials, transportation, promotion, labor, financing and other support systems. During this process, the FOB value of our industry to the state's economy is expanded by a factor of four. \$3.2 billion dollars is the estimated value to the economy of Washington and the United States because of the deciduous tree fruit industry in Washington during the year 1982. A similar, although smaller, monetary impact applies for Oregon. In addition to the impact on the two states' economy, it must be mentioned that our crops provide a significant boost to the U.S. export effort. We exported from Oregon and Washington nearly \$150 million dollars worth of product during the 1982 calendar year.

The deciduous fruit growing areas in Oregon and Washington are generally located in the fertile but narrow river valleys at the base of the Cascade Mountain range. Major producing areas are generally spaced over 100 miles apart due to climate and soil conditions. Elevation varies greatly even within the same growing district and, therefore, crops ripen at different times even though they may be close by in terms of distance.

The structure of farming in the Pacific Northwest is generally that of the family-owned and operated orchard. According to statistics published in November 1982 by the Washington Department of Agriculture, 5,626 farms were responsible for 115,244 acres of apples in the state or 20.48 acres of apples per farm.

The labor needs of the deciduous tree fruit industry are greatest at harvest. During much of the year the average owner/operator handles the work within his family or by adding a few workers as conditions require. At harvest, however, a sudden and relatively large increase in the need for labor exists. For example, a cherry grower may need 50 to 100 additional workers to harvest his crop on short notice and for a limited time period rarely exceeding four to five days. He will need these 50 to 100 workers, even though during the remainder of the year he may have only 1 or 2 additional workers helping him. Many times the demand for labor is immediate due to a combination of the ripeness of the cherries and an impending rain which would totally ruin the fruit and destroy the year's work and profit of the grower.

Nearly 40,000 farm workers are needed at the peak of apple harvest in Washington. It is estimated that between 40 to 50 percent of these workers were not residents of the state during the 1982 harvest. Many were undocumented workers from Mexico.

Generally, the harvest labor supply follows the tree fruit crops through California up into the Pacific Northwest as the fruit matures. The workers stop at the several production areas through Oregon and Washington until harvest concludes in late October with the final picking of apples in Northern Washington state. The first workers in the migrant stream appear for the June cherry harvest in the Northwest and rotate between the production areas of the West Coast as the various crops mature and as the need exists due to crop size and labor supply. Also, the preference of the individual worker plays a large part in which crops he will work and in which production areas he chooses to go. For example many workers who cut asparagus early in the summer in the Yakima Valley simply do not choose to work on ladders in the tree fruit industry later in the summer.

Presently, workers are protected by numerous state and federal labor and discrimination laws and are free to move as they please from individual grower to individual grower. The grower in the Pacific Northwest must, and does, pay a piece rate or hourly wage that will be attractive to the dedicated and skillful workers needed to harvest our valuable and perishable crops. The workers are swift at what they do in order to get the harvest in, yet sensitive in handling the product so that the crop is not ruined during harvest. Unlike many sectors of modern U.S. agriculture, no machine exists for our harvest. There is no substitute for the human hand and eye in harvesting deciduous tree fruits for the fresh market.

Since our growing areas are generally on the eastern slope of the Cascade Mountains, we are removed by a great distance from any major population centers. The permanent population of northern California, Oregon and Washington is quite small when compared with a similar geographic region on the eastern seaboard. Since year around work does not generally exist on a large scale for farm laborers in our type of agriculture, local labor cannot supply our needs. To be fully employed as a farm laborer on the West Coast one must be capable of moving with the various crops up and down the coast.

The present system of acquiring farm labor has worked well over the past few decades. With few exceptions, it has allowed our crops to be harvested in a timely fashion, provided for the employment of many people in need of jobs at a fair wage rate and had the least involvement by government, and therefore, the greatest freedom for both grower and worker.

SPECIFIC RECOMMENDATIONS ON H.R. 1510EMPLOYER SANCTIONS

We urge this committee to amend H.R. 1510, Title I, Part A, Sec. 274A (d) (1) (B) and (C) to delete possible criminal sanctions for employers and to change the civil penalty language to include the words "not more than" prior to the stated dollar amounts of \$1,000 and \$2,000.

We believe that this will protect employers in certain cases from grossly unfair fines yet keep the penalty Congress believes necessary to enforce the act. Our problem is with the extreme case where, for example, perhaps 100 workers may be put to work to salvage a farmer's cherry harvest. His entire year's work is at stake. With no local labor available and a rain storm expected he may very well put an undocumented work force, if available to work for two days. The judge faced with this case, and on a finding of guilt would be forced to assess a fine of \$100,000 on this farmer. There would be no leeway to take into account the circumstances of the infraction. Employers who flagrantly, and without any mitigating circumstances, violate this law could be assessed the full penalty by the judge under our suggested modification.

We do not believe criminal sanctions should be provided for by Congress under this statute until it can be shown that the civil penalties are truly ineffective.

We also point out the problem of verification of identification. We understand that two pieces of identification will be generally demanded of each worker by an employer who will then record the fact of receiving this information. We strongly object to any system that would require the farmer to call a national computer by way of a toll-free telephone to verify any identification. This time consuming process with labor intensive crops is simply not workable in the farm situation where telephones are not always at hand and, in fact, may be miles distant from the field where the crop is harvested. The harvest, itself, requires the full attention of the farmer and his family for the relatively short period when the fruit can be successfully harvested from the tree. Congress should not ask the farmer to spend his time on a telephone when he is needed elsewhere.

H-2 WORKER SYSTEM

The fruit growers of Oregon and Washington support the modifications to the H-2 worker program contained in H.R. 1510 as passed by the Committee on the Judiciary. For example the housing allowance provision is extremely helpful. However we urge this committee to take notice of further changes that are now being advanced in testimony today by the National Council of Agricultural Employers and the American Farm Bureau. We fully support their efforts at attempting to make the H-2 program a more workable one for those agricultural employers in a position to use it. We also support the transition program.

The Pacific Northwest has not used the H-2 program to date and, therefore, will defer to those more knowledgeable about the working of the program concerning these needed corrections.

While we support useful amendments to the H-2 program, we strongly believe that this program is not suited to our industry and most growers simply could not use it as a practical matter. We believe that the agricultural labor needs for seasonal perishable crops on the West Coast must be met by a separate program.

Our current labor supply is supplemented by many undocumented foreign workers. These people are primarily hard working honest individuals interested, usually, on earning money in order to better their lives upon return to their own country. They do not intend to become U.S. citizens. They are not on welfare. They simply travel to our orchards and vineyards on the West Coast to do a job that adequate numbers of local citizens refuse to do.

These people are not the problem in controlling the United States border. They are not part of the Haitian boat lift; they are not political refugees; and they are not the criminal element dumped by a country such as Cuba on our shores.

Furthermore, those who work in agriculture are obviously not in manufacturing or service industries where they would take year around jobs that are desired by U.S. citizens. They are simply migrant agricultural laborers moving between highly seasonal crops on the West Coast. Again, they are not taking the jobs of U.S. citizens willing to perform this type of work.

We seek to achieve the objective of Congress to control our borders in a way that is compatible with a continuation of this needed foreign labor supply.

We would advocate that the Agriculture Committee propose to the full Congress an amendment which would provide an alternative to the H-2 program. The H-2 program would remain, as modified by this Congress for those employers who presently use it and for those employers who would benefit from having an assured and definite labor supply at the time of harvest. This foreign labor is committed to the employer once there has been a showing of need and the numerous and complicated rules formulated by the Department of Labor are complied with by the employer.

It is this red tape and inflexibility that render the program unattractive to the West Coast grower. We believe that a free-market or flexible system is called for to supply the needs of western labor intensive agriculture due to historical, crop and geographical reasons.

Obviously, we understand that a responsible government official would have to be certain that domestic workers were not in sufficient supply to do the work in question. This official probably the Attorney General would, once a finding has been made of need, enter into negotiations with a source country such as Mexico for the authorization of a limited number of agricultural workers. Visas would be issued to make the workers coming into the United States legal workers under the protection of all U.S. laws. Visas would only be issued to actual workers and not family members. These people since they would be legal would not fear crossing the border or need to pay exorbitant sums to gain aid in crossing the border. They could travel in open society and, as a practical matter, be under the true protection of the law afforded by our legal system. In other words, they would not be afraid to go to public

officials or law officers in order to gain protection if they should be victimized by their fellow workers, employers or other individuals.

We would envision that instead of being sent to a specific employer and bound to that employer as under the H-2 system under the free-market system the worker, once granted a temporary visa, could travel throughout western agriculture just as he does today. He could move from employer to employer as he deems fit and as work and wage conditions dictate. These workers would not be allowed to work in non-agricultural jobs and their employment in those jobs would trigger the employer sanctions that are contained in the immigration bill before Congress.

We would envision that the agricultural employer would have to choose between using the H-2 system or this free-market system, but that he could not use both.

If a foreign worker violated any of the provisions allowing his entry into the country, for example, by taking a non-agricultural job, he would be barred from using the program for a certain amount of years into the future. Similarly, any employer violating the terms of the program could not hire such aliens for a certain period of time.

Finally, we would advocate that the program ensure that wages to paid equally to both foreign and non-foreign workers. Some payroll deductions ordinarily made by an employer to benefit the employee, if he were a resident of the U.S., could be diverted to a fund which could help ensure the return of these workers, at the end of their visa, to the source country.

We believe that this program would control the border while at the same time supplying the needs of the perishable agricultural industry. It would have a minimum of red tape and maximum of freedom. We believe that an amendment incorporating these points and, perhaps other points, should be introduced by this committee and debated and then passed onto the full Congress for adoption.

CONCLUSION

Employer sanctions should be modified and a program developed to allow foreign workers into the U.S. in a fashion to meet the needs of Western perishable agriculture. At the same time, we recognize the need for the H-2 program and urge its modification to make it more helpful to those employers who should choose to use it as a means to acquire needed foreign workers.

The Washington State Horticultural Association and the Northwest Horticultural Council thank the Agriculture Committee for its consideration of this statement. We trust Congress will take our needs into account during its consideration of this most important piece of legislation, the Immigration Reform Control Act of 1983.

NORTHWEST HORTICULTURAL COUNCIL
P.O. BOX 570
YAKIMA, WASHINGTON 98907
(509) 453-3193

The Northwest Horticultural Council was incorporated in 1947 with the following broad purposes as taken from the Articles of Incorporation:

"To correlate and coordinate the activities of its members and to assist in handling problems common to the Northwest tree fruit industry including, but not being limited to, export problems, negotiation of trade agreements, securing just and equitable freight rates for both domestic and ocean transportation spray residue and other general industrial problems and to serve, advise and consult with County State and Federal and Foreign Government Officials regarding laws, directives, orders and regulations, the form thereof and classifications and differentiations and adjustments therein affecting deciduous tree fruits."

The Northwest Horticultural Council is made up of several member associations. Each association has the right to place two (2) trustees on the governing board of the Council. The present member associations are listed below:

Hood River Grower-Shipper Association
Medford Pear Shippers Association
Washington State Apple Commission
Washington State Fruit Commission
Wenatchee Valley Traffic Association
Winter Pear Control Committee
Yakima Valley Growers-Shippers Association

The Northwest Horticultural Council also works closely with other fruit industry organizations within the states of Oregon and Washington.

The Northwest Horticultural Council Trustees, as of February, 1983, are:

Richard Clements, Rowe Farms (Yakima, Wa.)
Richard Duckwall, Duckwall-Pooley Fruit Company (Odell, Or.)
Herbert L. Frank, Yakima Fruit & Cold Storage Co. (Yakima, Wa.)
Bruce Howe, Diamond Fruit Growers Association (Hood River, Or.)
Dan Hull, Southern Oregon Sales, Inc. (Medford, Or.)
George Pheasant (Soap Lake, Wa.)
John Roche, Roche Fruit Company (Yakima, Wa.)
Gerald M. Smeltzer, Cascadian Fruit Shippers, Inc. (Wenatchee, Wa.)
Tom Spatz, Crystal Springs Packing (Medford, Or.)
Clayton Udell, Hansen Fruit & Cold Storage Company (Yakima, Wa.)
James Wade, Columbia Fruit (Wenatchee, Wa.)
Robert Wines, Welch Fruit Sales (Wenatchee, Wa.)

The Trustees set the budget and assessment schedule for the Northwest Horticultural Council and determine the various policies that the Northwest Horticultural Council pursues.

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The Northwest Horticultural Council is staffed with a full-time executive and secretary. On July 1, 1981 Christian Schlect succeeded the retiring Mr. Ernest Falk as president of the Northwest Horticultural Council. Mr. Falk, an attorney (as is Mr. Schlect), managed the Northwest Horticultural Council from 1950 until his retirement.

As President of the Northwest Horticultural Council, Mr. Schlect represents the tree fruit industry of Washington and Oregon on the following boards and committees:

- A. Joint USTR/USDA Agricultural Technical Advisory Committee for Trade on Fruits and Vegetables
- B. Board of Directors, National Council of Agricultural Employers (Washington, D.C.)
- C. International Trade Committee, United Fresh Fruit & Vegetable Association (Washington, D.C.)
- D. District Export Council, U.S. Department of Commerce/International Trade Administration (Seattle, Wa.)
- E. Secretary/Treasurer of the Pacific Coast Deciduous Fruit Council

The Northwest Horticultural Council, in addition to its general duties, also coordinates a foreign promotion program with the United States Department of Agriculture's Foreign Agricultural Service. This joint industry/government program has a budget of \$500,000 for fiscal year 1982. Decisions on expending the money within the budget are made by the individual commodity groups involved, such as the Washington State Apple Commission.

The Northwest Horticultural Council, as an organization, belongs to the following groups:

- 1. Washington State Horticultural Association
- 2. National Council of Agricultural Employers
- 3. United Fresh Fruit & Vegetable Association
- 4. Washington State Pest Management Alliance
- 5. United States Agricultural Export Development Council

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STATEMENT

OF

GERALD R. RISO
DEPUTY COMMISSIONER
IMMIGRATION AND NATURALIZATION SERVICE

- Chairman de la Garza and Members of the Committee,

I am pleased to be here and to have an opportunity to testify on H.R. 1510, the Immigration Reform and Control Act of 1983. The Department of Justice is the lead agency representing the Administration's efforts to provide assistance and operational guidance to sponsors of this vitally important legislation. Accordingly, the Attorney General, Commissioner Nelson and other Department of Justice officials have met on numerous occasions with representatives of the agricultural community regarding their concern about the changes contemplated by the immigration reform legislation. This hearing affords us an additional opportunity to address questions on the effect of immigration reform on agricultural employers and workers.

H.R. 1510 contains a well deliberated approach to the multiple immigration problems that we face in this country. An immigration control bill should include authority for enhanced enforcement of the law, humanitarian concern for aliens who have established strong equities in the United States, and provisions to meet the legitimate needs of employers.

The conditions which have led to our present problems in immigration are neither new nor unusual. The United States has for many years presented an attractive lure to people from many parts of the world. The individual freedoms of its residents and the opportunities that are available have encouraged immigration since the very beginning of our country. Because of this, we have developed as a nation of many immigrants. Unfortunately in the last decade, the greatest increase has been in the number of illegal migrants who entered without inspection or overstayed their nonimmigrant visas. The

652,885 apprehensions of illegal aliens along our southern land border from October through May -- 48 percent above the level of FY 1982 -- is but one measure of the pressure from illegal entry.

Immigration must be under the rule of law and under control of the United States in accordance with our terms and conditions. It cannot be allowed to take place on the terms of those persons seeking entry. The Immigration Reform and Control Act of 1983 recognizes this fact. By placing sanctions on hiring undocumented aliens, the bill would eliminate one of the primary reasons aliens enter illegally -- for employment. By providing for the legalization of aliens who have been productive members of our society for several years, the bill recognizes the reality of this situation and presents a humanitarian and realistic approach. The bill also recognizes the need that some employers may have for legal short-term foreign workers in agriculture or other industries and it provides the means by which such workers may be allowed to enter our country.

Now I would like to comment on the specific provisions of H.R. 1518 of specific interest to this Committee.

Employer Sanctions

The cornerstone of the bill is the employer sanctions. The employer sanctions would be imposed on individuals who knowingly hire aliens who are unauthorized to work in the United States. As I have stated before, the most compelling reason for illegal immigration is employment. This provision is

absolutely essential if we are to gain control of our borders. Only through this means can we remove the magnet which attracts so many illegal aliens to our country.

H.R. 1510 requires persons who hire, recruit, or refer individuals for employment to do certain simple tasks:

- 1) verify all new hires' right to be employed in the United States by examining documents which identify an individual and show that he or she is eligible to work;
- 2) to do so in good faith; and
- 3) to retain in one's records a simple form on which they have attested that they have followed the verification procedure.

An individual who seeks employment in the United States must only complete a form and attest that he or she is a United States citizen, or an alien who has been authorized for employment. He or she must produce substantiating documentation which is readily available. Showing such documentation is no different than the process by which an 18 year old establishes his right to buy alcoholic beverages, you or I cash a check, or we gain entrance to the many government buildings in this city.

The two processes together are a small added burden for each employer or new job applicant. They can be completed in a short period of time. Even for a large group of employees, this verification procedure can readily be

accomplished before hiring and should not be subject to the delay of one and one-half days authorized by H.R. 1510.

The Immigration Service is prepared to assist both employers and employees with the verification procedures. We want to keep it simple, and the short form we have tentatively designed should do just that. We will be available following hiring to check documentation about which employers have doubts. We do not expect nor want employers to make technical judgments as to the authenticity of documentation. Similarly we will stand ready to verify documents for individuals, when they are unfairly rejected on documentary grounds.

The Administration supported the eligibility verification procedure mandated by H.R. 1510, when it was introduced last February. This was essentially sound. It exempted 50 percent of employers -- those employing 3 or fewer employees --and 5 percent of employees from the verification requirement without diluting the impact of the procedures as a mechanism for control. The Judiciary Committee amendment which exempted all employers until given official notice by the Attorney General that there is an illegal alien in their employ, raises several problems regarding effective enforcement of employer sanctions.

It creates the potential for discriminatory judgments by employers who are not obliged to keep any records, but who may still decide to screen out persons whom they think might be illegal aliens. The Department believes that uniform applicability of the verification requirements will work to the benefit of all concerned -- the employers, job applicants, the public, and the enforcement

agencies. If there is a need to lessen the paperwork burden, the Committee should return to the exemption for employers of three or less employees.

This amendment will severely increase Service costs and resource requirements. The level of voluntary compliance with the verification procedures will be negligible. Employers are aware of the limited resources of the Service and will continue to follow current practices in hiring illegal aliens until they receive a notice from the Service. The single task of approaching all employers would take in excess of 15 years using current INS enforcement resources. While this is occurring the Service cannot abandon other vital enforcement programs. The amendment imposes an intolerable burden on the Service which would require an unacceptable increase in resources to maintain effective enforcement.

The verification system is the only way in which aliens personally feel the effects of the employer sanctions program, since all of the other provisions focus on the actions of the employer. The system imposes a passive but effective restraint on illegal immigration because aliens who seek unauthorized employment will experience an unwelcome examination of their status in the United States. This will deter their illegal entry or continued presence in the United States. The Judiciary Committee amendment rejects the verification system and discards the indispensable advantages of the system as a means of restoring control of illegal immigration.

The amendment requiring a warrant for entry onto open lands also contradicts the goal of curbing illegal entry to the United States and its labor market. We believe that this will undercut employer sanctions and other immigration law enforcement.

The provisions for administrative and judicial review of employer sanctions violations should be simplified. The potential for employers to seek administrative and judicial review of civil penalties and the requirement that the Government affirmatively institute a collection suit to secure payment of penalties ultimately upheld on appeal could so burden the system that it would dramatically reduce the number of actions brought. Both administrative and judicial rights of appeal should be limited and consistent with due process. In addition, a final order affirming the imposition of a civil penalty should not require a subsequent action to secure payment.

H-2 Temporary Foreign Workers

The Administration supports the goals of H.R. 1518 to protect domestic workers from adverse impacts due to foreign labor and at the same time to provide a streamlined means for the legal entry of temporary foreign workers when a need for their services is clearly shown that cannot be met by American workers. Such a legal system will be extremely important as an adjunct to effective sanctions against the hiring of illegal aliens. This will help to avoid the harmful effects that shortfalls of domestic workers would have on some employers, particularly agricultural employers, during the transition period between the introduction of employer sanctions and development of new

sources of American workers. We continue to support the Administration's H-2 provisions, submitted on May 6, 1982, which aimed at a reasonable balance between the interests of agricultural employers and domestic workers.

Transitional Nonimmigrant Agricultural Worker Program

In an attempt to lessen the short term impact of the employer sanctions provision of the Simpson/Mazzoli bills on agricultural employers, the House Judiciary Immigration Subcommittee added an amendment to H.R. 1510 to establish a Transitional Nonimmigrant Agricultural Worker Program. A somewhat similar program relying on regulations for much of its specification was passed by the Senate. The final form and provisions of a transitional agricultural worker program will depend on reconciliation of the House and Senate versions, but several general observations and recommendations are warranted. It is essential that this program not be a magnet for illegal entry of new workers into the United States labor force.

The provision contained in H.R. 1510 would require agricultural employers who desire to employ nonimmigrant aliens to submit a request for participation to the Attorney General during the first year of the transitional program and to provide information on the employer's requirements for seasonal agricultural labor in future years and the use of such labor in the past. After consideration of the needs of agricultural employers and the availability of domestic agricultural labor, a certification for the employment of specified numbers of transitional agricultural workers during designated periods of the year could be approved by the Attorney General.

Upon approval to an agricultural employer for the employment of such nonimmigrant workers, work permits for each individual alien would be issued to the employer. A copy of the permit, valid only for a specified period of time, would be endorsed by the employer and given to the alien at the time of hiring. An additional endorsed copy would be transmitted to the Attorney General and a copy would be retained by the employer. According to the current bill the endorsed permits issued to the nonimmigrant workers by their employers would be evidence of alien registration and authorization for employment.

During the first year of the program, employers could be authorized to employ nonimmigrant workers for 100% of their projected needs. The authorizations would be reduced to 67% in the second year and 33% in the third. The program would end after the third year. It is important that this phase down program come to an end with the third year, as currently written.

In considering such a transitional program, several objectives should be kept in mind.

1. That the program not encourage additional illegal entry by persons not already in the illegal migrant stream;
2. That the federal government should be in control of the registration and documentation of participating aliens;
3. That the aliens be required to return home upon completion of employment and/or the program.
4. That registration of employers and aliens be accomplished as

efficiently, conveniently, and as cost-effectively as is reasonable;
and

5. That the program be self-sustaining, covered by fees charged to the participants.

As presently written, the House transitional program provisions contain two primary problem areas for INS - - open-ended eligibility for aliens and no specification of government registry of participating aliens in the United States.

Currently the provisions would make eligible any alien hired by a participating employer. However, it would seem likely that illegal aliens outside the United States are included as well as aliens in this country since there is the provision for agricultural employers to forward work permits to consular officers abroad for the purpose of issuing nonimmigrant "O" visas.

The lack of a clear definition of eligibility would create a new stream of foreign workers entering this country and the incentive to enter illegally in search of employers with work permits. This would defeat the primary intent of the reform legislation, which is to control immigration.

By defining the eligible group more clearly, this problem could be reduced to some extent. It is suggested that they be identified as illegal aliens in the United States who are currently employed by an approved employer or have been employed in agriculture in the United States during the year preceding the enactment.

The second serious shortcoming of the program is the lack of a specific provision for the Government to screen and document those aliens in the United States who are to participate in the program. One alternative for dealing with this issue that we are considering would be for INS screening of all participants in the United States to determine their eligibility and for the issuance of appropriate official identification apart from the work permit issued by the employer. If this were done, we would secure greater control over the aliens who participate, reduce the incentive for illegal entries in search of work permits, and screen out the undesirable aliens. This screening and registry would be conducted within the United States during the first twelve months. Only those aliens registered in the first year of the program should be eligible to participate in the second and third years. Government screening and registry would take place after an alien had been hired by an approved employer. Under this alternative, the alien would be obliged to come to an INS office to be registered and documented by INS, within 30 days of being hired (or earlier if the work permit was for a lesser period). A mechanism should be sought to assure that transitional workers do return to their homelands. This transitional program should not contribute to further illegal alien presence in the United States.

The Immigration Service is developing workload and costs estimates related to this program and will be submitting them shortly to the Department of Justice and the Office of Management and Budget for their review. We expect that the processing expenses of this program will be covered by fees charged to participating employers and aliens.

We will continue conversations with agricultural employer organizations, even as we welcome the opportunity to meet with this Committee to discuss the operation of this proposed program.

This completes my prepared remarks. I would be glad to answer any questions.

STATEMENT OF
A. JAMES BARNES
GENERAL COUNSEL
UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE
COMMITTEE ON AGRICULTURE
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING
THE IMMIGRATION REFORM AND CONTROL ACT OF 1983
H.R. 1510

June 15, 1983

Chairman de la Garza and Members of the Committee, I appreciate the opportunity to appear today on behalf of the Department of Agriculture to discuss with you this issue of national concern. I will, of course, be directing my comments to certain of the issues raised by H.R. 1510, the Immigration Reform and Control Act of 1983. Before discussing the bill, I would like to make a few observations to help put our comments in perspective.

In the agricultural sector, there is both an awareness of the serious immigration control problem we face and an understanding of the need to take corrective action. Agricultural producers generally support return to a rule of law and to regaining control over our nation's borders. At the same time, there is a consistently expressed concern that the government allow an adequate, timely, legal supply of labor for agriculture by providing a mechanism for the use of alien labor on a temporary basis if qualified domestic workers are not available and the use of such aliens will not adversely affect U.S. workers.

For a number of reasons, we share this concern. As a matter of fundamental fairness, if it will be illegal to hire undocumented workers, then access to a legal workforce should be provided when needed. At the same time, failure to provide access to an adequate legal workforce would doubtless result in continued use of undocumented workers, which would undermine our overall objective of improved immigration control. Furthermore, failure to provide access to an adequate legal workforce could lead to a serious disruption of

agricultural production, adversely affecting both producers and consumers. Loss of production of some crops could reduce the nation's self-sufficiency in fresh fruit and vegetable food production and the positive contribution agriculture makes to our balance of payments.

There are currently an estimated 300,000 - 500,000 undocumented aliens who work each year on our nation's farms and ranches. They are primarily engaged in seasonal harvest work in the Southwest and along the West Coast. From World War II until 1964, this area relied on the "Bracero" program to provide much of its seasonal labor supply. When that program ended, the area turned to using illegal aliens to help fill its seasonal labor needs. Thus, as an immigration control program is implemented, the greatest need for access to a legal workforce to replace the current illegal workforce, is in the Southwest and along the West Coast. However, over the past year agricultural employers in other parts of the country have discovered that some employees they thought were legal aliens, were in fact illegally here.

The agricultural community will be particularly affected by the enactment of the Immigration Reform and Control Act of 1983. The proposed legislation seeks to control the illegal alien stream now flowing into this country by imposing sanctions on employers who knowingly hire illegal aliens. The majority of the U.S. hired farm workforce is comprised of seasonal workers who work for a few days or months during peak planting and harvesting periods. In 1981, only 16 percent of our hired farmworkers worked fulltime for 250 days or more. As a result, many agricultural employers regularly recruit and hire large number of employees who may work for only a few days or weeks. In order to employ workers under the present provisions of H.R. 1510 during each planting or harvest season the producer must locate an adequate number of domestic or legal foreign workers. The employer will be subject to sanctions

if he knowingly hires a worker who is an illegal alien, even though that alien may have worked for the producer numerous seasons in the past.

The legalization provisions of the Act are expected to permit a number of current illegal aliens in this country to register, become legal residents, and legitimately enter the U.S. workforce. An employer would be permitted to hire a properly documented legal resident from this legal worker pool. Under the provisions of H.R. 1510, aliens who have resided illegally in this country since January 1, 1982, would be eligible for legalization. The Senate bill's legalization provisions vary from the House version, granting permanent legal residency to those aliens who have resided in the U.S. illegally since January 1, 1977, and providing temporary legal residency for those who have resided here since January 1, 1980.

Some of our concern begins with the fact that we do not know the numbers of illegal aliens in the agricultural workforce who will be eligible to apply under any legalization provisions that are ultimately enacted; we do not know how many of those eligible aliens will voluntarily apply to become legal residents of this country; and we do not know the number of aliens who will remain in the agricultural labor force once they attain the legal resident status.

Agricultural producers are concerned that legal farm workers may not be available when they are needed to harvest their crops. We were pleased that the bill (S.529) passed this year by the Senate, as well as H.R. 1510 as reported out by the Judiciary Committee, explicitly recognize the need for a sufficient legal workforce by providing a statutory basis for a temporary agricultural H-2 worker program and a transition program for seasonal agricultural employers. As we have previously testified, we believe that a flexible temporary agriculture worker program is a responsible, targeted

vehicle for helping assure access to an adequate, timely legal supply of labor to agriculture, that at the same time protects the legitimate interests of the domestic workforce.

The present "H-2" program is, of course, defined and established almost entirely by regulations of the Immigration and Naturalization Service and the Department of Labor. These regulations are based on clause (H)(ii) of section 101(a)(15) of the Immigration and Nationality Act, which defines an H-2 worker as a nonimmigrant alien resident of a foreign country who comes temporarily to the United States to perform temporary services or labor if unemployed persons capable of performing such service or labor are not available.

The current H-2 program is used primarily on the East Coast where it is working fairly well, although we believe that some changes in it are desirable. As we try to assess the possible use of an H-2 program on a broader scale in other parts of the country, notably the Southwest and West Coast, it is critical to note a number of significant differences between the agricultural labor situation there and on the East Coast. There may be a much greater need in the West for flexibility for workers to move from one farm to another, or from one crop to another, to meet the changing labor needs than is true in the East. Moreover, larger numbers of H-2 workers might be involved in the West. Fewer than 20,000 H-2 workers are now admitted annually to fill jobs in agriculture, primarily on the East Coast; the need could be significantly larger in the Southwest and West Coast regions.

Existing H-2 regulations, which are premised on the protection of similarly employed U.S. workers require the payment of an adverse effect wage rate, determined by the Department of Labor. Although not required of employers of other types of H-2 workers, agricultural employers and those in the logging industry must provide housing, meal allowances, and transportation

for their H-2, and similarly employed domestic, workers. Historically, the Department of Agriculture has not been consulted prior to promulgation or approval of H-2 regulations. We are pleased that H.R. 1510 gives the Secretary of Agriculture a new statutorily designated consultative role so that agricultural concerns can be considered.

Certain other provisions of the H.R. 1510 provide some of the flexibility we believe is necessary for a workable H-2 program. For example, current regulations require that an employer apply for H-2 certification at least 80 days before the date the workers will be needed. Some agricultural producers have expressed concern that they will not be able to accurately predict their labor needs 80 days before harvest. The House Judiciary Committee has addressed this concern by reducing the filing deadline to 50 days prior to the date the laborers are needed. At the same time we recognize that the Department of Labor is concerned as to whether this will give them sufficient time to try to recruit U.S. workers.

As I indicated earlier, the Department of Agriculture is primarily concerned about the potential for undue disruption of agricultural production. Our concern encompasses not only a need for a safety valve, on a H-2 temporary worker program, but also time for such a program to be effectively put in place in areas where it is not being extensively used at the present time. Accordingly we were happy that this year both the House Judiciary Committee and the full Senate have added an agricultural transition program to their respective immigration legislation. A transition program can be particularly helpful in addressing the special concerns of the producers of highly perishable, labor intensive crops. These producers, located primarily in the West and Southwest, fear that they will be unable to secure sufficient domestic laborers to harvest their crops and that it will be difficult to meet the

requirements of participating in the H-2 program immediately following passage of any legislation. These producers strongly support a flexible transition program which will serve as a safety valve in the event that sufficient domestic laborers and/or legal aliens cannot be found. A flexible transition program will also give governmental agencies an opportunity to plan and prepare for the implementation of a codified H-2 program. The Department of Agriculture, and most producers, generally prefer the Senate transition program to the House program as providing a more adaptable mechanism to meet the needs of the agricultural community.

In sum, we hope that H.R. 1510 will provide a flexible agricultural worker program that can be developed and administered in a manner that will assure that the various competing interests would be fully heard and, to the extent possible, accommodated in a manner consistent with the national interest. While urging that the program have the necessary flexibility, we also recognize the need for adequate controls to insure that the problems we are striving to address does not recur nor result in an incentive for further illegal immigration to the country. We would be happy to work with the committee to develop the legislation necessary to implement such a program.

As I conclude, I would of course be happy to respond to any questions the committee may have.

STATEMENT OF ROBERT W. SEARBY
DEPUTY UNDER SECRETARY
FOR INTERNATIONAL LABOR AFFAIRS
U.S. DEPARTMENT OF LABOR
BEFORE THE
COMMITTEE ON AGRICULTURE
UNITED STATES HOUSE OF REPRESENTATIVES

June 15, 1983

Mr. Chairman and Members of the Committee:

We welcome the opportunity to appear before you today regarding the labor-related aspects of H.R. 1510, the Immigration Reform and Control Act of 1983. We believe immigration control is pressing and long overdue. These changes are critical to any effective reduction of the increasingly large flow of undocumented aliens into our Nation and our labor market.

As we have all discovered, illegal immigration is a complex and troubling issue which touches, directly or indirectly, the lives of many individuals and the welfare of many interest groups, both at home and abroad.

Employer Sanctions

Once again, the basic building blocks of immigration reform, strongly supported by this Department, are amendments to the Immigration and Nationality Act (INA) that would prohibit the knowing employment of aliens without work authorization, provide employers with a mechanism for determining the work eligibility of all job applicants, and establish a legalization

program as the only practical and humane means of dealing with the current illegal population.

Additional controls over the entry of foreign nationals into our labor market are necessary because illegal immigration has clearly been increasing. During the past decade, for example, Immigration and Naturalization Service (INS) apprehensions of deportable aliens increased by more than 300 percent. An estimated 0.5 million more come each year. Most enter the U.S. labor market and find employment in low-level jobs, where the minimum wage is up to 10 times more than the wage available to them in their homelands.

Illegal immigration is principally the result of international disparities in wages and employment opportunities. Thus, effective control of our borders requires controls over access to our labor market. The Department of Labor therefore strongly supports employer sanctions. We believe that this proposed amendment to the INA would be a critical step toward improving the employment opportunities, wages, and working conditions of our most vulnerable workers--the low-skilled American and legal immigrant workers, with whom undocumented workers most often compete.

While it is impossible to quantify the precise impact of this additional supply of undocumented alien workers on similarly employed U.S. workers, the laws of supply and demand

dictate the direction of those effects. Illegal immigration, because it constitutes an increase in the supply of low-skill workers, reduces the employment opportunities of low-skilled workers in this country. For example, in a calculation of the labor-market impact of illegal immigration, labor economist Michael Wachter has suggested about a 20 percent displacement effect. This does not include displacement of U.S. workers who leave the labor force entirely and therefore do not count as unemployed. According to Wachter's assumptions, this latter group could be about the same size as the displaced unemployed, or about another 20 percent of the size of the undocumented alien workforce. Since Wachter's analysis assumes a situation of full employment, the displacement effects of continuing illegal immigration, which are indirect, are likely to be different in a situation of high unemployment.

It is also important to recognize that the claim that undocumented aliens are employed only in jobs that Americans will not take cannot be sustained. In 1982, close to 30 percent of all workers employed in this country--some 29 million people--were holding down the kinds of low-skilled industrial, service, and agricultural jobs in which undocumented aliens typically find employment. Nor can it be claimed that Americans will not take low-wage jobs. In 1982, an estimated 8.8 million workers were employed at or below the minimum wage (\$3.35

an hour). An estimated 4 million more were employed in jobs earning within 25 cents more per hour than the minimum wage.

The U.S. workers with whom illegals compete are demonstrably also our most vulnerable workers. The unemployment rate of blue-collar workers in 1982 was nearly three times that of white-collar workers: 14.2 percent, as compared with 4.9 percent. The unemployment rates of unskilled blue-collar workers--for example, nonfarm laborers--have been especially high: 18.5 percent in 1982. Likewise disturbing is the 1982 unemployment rate of agricultural wage and salary workers--14.7 percent. In addition, as we all know, the unemployment rates of young workers, blacks, and Hispanics, many of whom are low-skilled, have been conspicuously high during recent years. Unemployment rates for teenagers last month were 19.8 percent for whites; 28.9 percent, for Hispanics; and 48.2 percent for blacks. In May, the unemployment rate for blacks was 20.6 percent and the unemployment rate for Hispanics was 13.8 percent.

The H-2 Program

The Department of Labor (DOL) currently operates the numerically unrestricted H-2 labor certification program through the provisions of section 101(a)(15)(H)(ii) and section 214(c) of the INA, and the INS and DOL regulations issued thereunder.

Section 101(a) (15) (H) (ii) of the INA restricts such nonimmigrants to aliens who are coming temporarily to the United States to fill temporary jobs if unemployed persons capable of performing such service or labor cannot be found in this country. Section 214(c) of the INA grants responsibility for decisions regarding the importation of such workers to the Attorney General, and directs him to consult with appropriate agencies of the Government prior to a determination on the petition of an importing employer. Pursuant to INS regulations, DOL issues an advisory opinion, commonly known as a labor certification, on (1) the availability of U.S. workers for temporary jobs offered to aliens, and (2) whether the terms and conditions attached to such job offers would adversely affect the wages and working conditions of similarly employed U.S. workers. This Department administers the H-2 labor certification program through the regulatory process. The Department has promulgated a separate set of regulations for labor certification procedures for agricultural and logging workers and for temporary non-agricultural workers.

Section 211 of the bill would amend INA provisions relating to the importation of H-2 workers. This proposed codification of the H-2 labor certification program for nonimmigrant farm-workers proved to be both technically complex and controversial. We count at least seven permutations of the original Simpson/Mazzoli

H-2 provision, including one submitted last spring by the Administration, as an alternative to its earlier proposed experimental guestworker program.

The Administration is deeply committed to enactment of measures to control illegal immigration. As we stated earlier, we believe employer sanctions are an essential factor in protecting our many low-skilled citizen and immigrant workers from the adverse effects of continuing illegal immigration. The Administration believes that its substitute H-2 provision, submitted on May 6, 1982, aimed at a reasonable balance between the interests of U.S. workers and the legitimate needs of agricultural employers.

Further, while the Administration recognizes that some employers have legitimate needs for the temporary services of nonimmigrant alien labor, particularly in the event that future flows of undocumented workers are curbed through the enactment of employer sanctions, we also believe that it is imperative that we continue to provide basic protection to the U.S. work force, which may be adversely affected by alien labor competition. We believe that U.S. citizen and legal immigrant workers should be employed whenever possible, and that American employers should be required to offer jobs to qualified workers in the United States before being allowed to recruit aliens abroad.

That is, we believe that any temporary alien worker program must have safeguards that protect U.S. labor standards and prevent the displacement of U.S. workers. The Administration's substitute H-2 provision would therefore condition any labor certification for H-2 nonimmigrant workers upon a determination by the Secretary of Labor that (1) there are not sufficient qualified workers available to perform the labor or services involved in an employer's petition for temporary alien workers, and (2) the employment of aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The Administration's substitute H-2 provision would also limit the time period for nonimmigrant H-2 workers to remain in the U.S. for a period of not longer than eight months in any given calendar year, except for those occupations which the Secretary of Labor has previously recognized required a longer duration of stay. While H.R. 1510 is silent on the issue of an H-2 worker's duration of stay in this country, we believe that this eight-month limitation is a critical immigration control provision. The longer that nonimmigrant alien workers are permitted to stay, the more likely they are to be attracted to unauthorized employment and to press for the admission of their spouse and children or to form families in their country of employment. This increases the potential for both illegal immigration and backdoor immigration.

In accordance with our concern, the Administration's proposed H-2 amendments would codify this Department's current regulatory authority for the H-2 labor certification program, while balancing that codification with retention of the Attorney General's final statutory authority over the importation of H-2 nonimmigrant workers and provision of a new statutory consultative role for the Secretary of Agriculture regarding the issuance of H-2 certification regulations for agricultural employment.

Transitional Agricultural Worker Program

We would like to address now the issue of a transitional agricultural worker program. When the Administration proposed its codification of the H-2 program as a substitute for its original guest worker program, it was our belief that the codified H-2 provisions could adequately address the needs of agricultural employers who believed that employer sanctions and legalization would leave them without sufficient workers to harvest their crops. During the consideration of the Simpson/Mazzoli bill in this Congress, the Senate and the House Judiciary Committee considered that the dependence of agricultural employers upon an illegal workforce warrants a transitional period to phase out the use of illegals and replace them with domestic and legal alien workers.

This Department has not changed our basic view that a codified H-2 program could be sufficient to meet labor needs.

However, if a separate transitional program is enacted, it should encompass certain basic criteria to ensure operational feasibility and control.

First, the Attorney General should be given specific authority and control over such a program to ensure that the program does not create new streams of illegal immigration and that transitional workers return to their country of origin.

Second, eligibility under such a program for both agricultural employers and transitional workers should be strictly controlled and under circumscribed criteria. On the one hand, employers who participate in the transition program should demonstrate that they will not displace domestic or legal alien workers, and on the other hand these alien workers should not be ineligible under the exclusion provisions of the Immigration and Nationality Act.

Third, participation in the program should not be a bar to eligibility, for those who would also be eligible for legalization, nor should it exclude one from compliance with the Federal and State labor laws of this country.

Fourth, if employers choose to utilize the H-2 program in addition to the transitional program, all the protections of the H-2 program should apply to all of the similarly employed workers of that employer.

Fifth, consideration should be given to the equities which accrue to aliens as part of any guest worker program under the various international accords and conventions which currently exist.

Thank you, Mr. Chairman. This concludes our prepared remarks. We would be pleased to answer any questions you may have.

STATEMENT
of
PERRY R. ELLSWORTH, EXECUTIVE VICE PRESIDENT
NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS
before the
COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES
on
JUNE 15, 1983
regarding
THE IMMIGRATION REFORM AND CONTROL ACT OF 1983
(H.R. 1510)

The National Council of Agricultural Employers appreciates the opportunity to appear today with the other members of this panel to discuss the views of agricultural employers regarding H.R.1510, the Immigration Reform and Control Act of 1983.

The subject legislation is of particular concern to agricultural employers because of the "unknowns" involved and agriculture's unique labor needs. Many agricultural producers are presently dependent upon undocumented workers. Estimates of the number of such workers vary greatly. No one knows how many will be eligible for amnesty. No one knows how many of those eligible for amnesty will seek it. No one knows whether present undocumented agricultural workers, once granted amnesty, will remain in agriculture.

Producers of labor-intensive agricultural commodities need their workers at specific times and in specific numbers. It matters not whether a producer's needs are large or small. Failure to obtain needed workers at the proper time can result in crop loss and financial distress.

Many agricultural producers will face a greatly altered situation if this legislation is enacted. Our purpose in appearing before you today is to work for language in H.R.1510 which will enable agriculture to adjust to the Immigration Reform and Control Act in an orderly fashion without crop loss.

Each member of this panel will address different aspects of the legislation. There will be no repetition. Let the record show, however, that each of us agrees with and supports the testimony of the others.

The legislation before the Congress (H.R.1510 and S.529) is much improved over that which was before the 97th Congress. Both bills contain, and we support a three-year transition program to enable agricultural employers to phase into compliance rather than face what promised to be chaos.

Both bills require the Immigration and Naturalization Service to obtain a search warrant before entering a farm or ranch. The House bill, parenthetically, provides an alternative--entry with a farmer's permission. We support this requirement.

Both bills continue the H-2 program as the source of temporary foreign workers if needed. There are differences in the details, however, and some of them will be addressed later by me and other panel members.

Both bills provide that the Attorney General, in consultation with the Secretaries of Agriculture and Labor, shall approve regulations to be issued implementing changes in the H-2 program. We support the provision.

Neither, bill however, addresses fully the problem seen by western growers of perishable agricultural commodities. Other witnesses representing the Farm Labor Alliance will discuss this problem. The members of this panel support and urge your favorable consideration of the Alliance's proposal.

One matter of extreme importance to agricultural employers who may find it necessary to utilize H-2 workers to fill a shortfall of U.S. workers is the length of time an H-2 worker is permitted to remain in this country. The Secretary of Labor, in response to an employer's request, may certify an employer to use H-2 workers for a certain period of time. That period of time is tied to the need of that individual employer. The length of time an H-2 worker may remain in this country is quite another matter, and is, at present, set by the Immigration and Naturalization Service. This is as it should be. The INS is responsible for visa entries and length of stay.

H.R.1510, however, would authorize the Secretary of Labor to specify the length of time an H-2 worker could remain in this country. That specific provision should be changed to name the INS as the controlling agency, not the Department of Labor. Let the Department of Labor certify employers and let the INS set the length of stay for H-2 workers. If the need for H-2 workers is as great as many fear it will be, there should be a continuation of the present INS regulation which permits H-2 workers to be transferred from one Department of Labor-certified employer to another.

The INS can determine the point at which H-2 workers should be returned to their home country.

H.R.1510 specifies, in Section 211, that the Secretary of Labor may deny an employer certification for up to three years if that employer has been found to have substantially violated an essential term or condition of the program during either or both of the preceding two years. S.529 provides denial for up to one year. While there is no objection to penalizing an employer for a substantial violation of an essential term or condition, denial of certification for up to one year should be the maximum. There is a good chance that even a one year denial could cause crop loss and financial distress. A three year denial would assure disaster for a farmer or rancher dependent upon H-2 workers to meet his or her labor needs. This Committee is urged to support a change to H.R.1510 to limit denial of certification to no more than one year.

That concludes my statement. I will be happy to answer questions after the other panelists have addressed their concerns.



**NATIONAL
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**STATEMENT
of the
NATIONAL CATTLEMEN'S ASSOCIATION**

**Before the
Committee on Agriculture**

**Regarding
H.R. 1510--Immigration Reform
and Control Act of 1983**

**Presented by:
Wm. J. (Dub) Waldrip
President**

Lubbock, Texas

June 15, 1983

The National Cattlemen's Association is the national spokesman for all segments of the nation's beef cattle industry--including cattle breeders, producers, and feeders. The NCA represents approximately 245,000 professional cattlemen throughout the country. Membership includes individual members as well as 50 affiliated state cattle associations and 19 affiliated national breed organizations.

SUMMARY

The Immigration Reform and Control Act of 1983 is of interest to the National Cattlemen's Association and has been the subject of careful study by NCA.

Corrective legislation must recognize the needs that are unique to agriculture and must be fair and equitable to the agricultural employer who depends on alien labor as a vital part of his operation.

Recently, several changes have been made in H.R. 1510 which would make the bill less biased against agricultural employers. Specifically, these improvements have dealt with the following:

SEARCH WARRANTS -- The NCA is pleased that the House Judiciary Committee agreed on a provision which would require the Immigration and Naturalization Service to obtain a search warrant or the owner's permission before entering an agricultural property.

DOCUMENTATION -- The NCA supports the added provision in H.R. 1510 which excuses employers from keeping burdensome records so long as they make a practice of hiring documented workers. Any necessary documentation, however, should be based on an easily identified, simple, workable and accountable national identity program that will not discriminate against bone fide citizens.

The NCA believes the following provisions should be reconsidered:

H-2 WORKER PROGRAMS -- H-2 worker programs or others of this kind must recognize the needs of agriculture. Burdensome red tape and regulation's should be minimized. Such programs should be designed to help agricultural employers and workers, not discourage them.

EMPLOYER SANCTIONS -- Current provisions in H.R. 1510 make the employer the scapegoat for an ineffective direct enforcement program which is the responsibility of the border patrol and other law enforcement agencies. The NCA opposes the provisions calling for criminal penalties on the grounds that they are harsh and unnecessary.

My name is William J. (Dub) Waldrip. I am a rancher from Lubbock, Texas and currently serve as President of the National Cattlemen's Association. I appreciate the opportunity to testify before this committee today to express NCA's views on the Immigration Reform and Control Act of 1983. These views have been established through two years of careful study. In March, Mr. Ted Hornibrook, Chairman of NCA's Labor Committee, expressed our concerns in testimony before a subcommittee of the House Judiciary Committee.

Since that time, several changes have been made in H.R. 1510 which have made the bill less biased against agricultural employers. However, it is our opinion that certain remaining provisions are unreasonable and should be reconsidered in the interest of fairness to all concerned.

I would like to address specific provisions of H.R. 1510 which are of concern to the cattle industry in particular and to agricultural employers in general.

SEARCH WARRANTS

The NCA is pleased that the House Judiciary Committee agreed on a provision which would require the Immigration and Naturalization Service to obtain a search warrant or the owner's permission before entering an agricultural property. This is a great improvement over the bill as introduced which would have been extremely biased against agriculture in this regard.

DOCUMENTATION

The NCA supports the provision in H.R. 1510, as reported out of the House Judiciary Committee, which excuses employers from keeping burdensome documentation so long as they make a practice of hiring documented workers. It must be realized that many agricultural employers do not routinely hire alien workers--legally or illegally. In many cases, local "odd-jobbers", with which the employer is acquainted, are hired on a temporary basis for a specific task. In some cases, relatives such as nieces or nephews are hired on a temporary basis.

The current Senate version of the bill would require that every employer of four or more workers keep detailed documentation on every worker even in such cases where it has absolutely nothing to do with immigration.

The NCA, therefore, encourages the House to retain it's common sense provision reducing the documentation requirements in any conference bill which may come to a vote.

H-2 WORKER PROGRAM

H.R. 1510 does make certain changes in the H-2 worker program regarding agriculture. Unfortunately, we do not believe they adequately address the real needs of agriculture. Agricultural needs for a temporary worker program are unique in that they must consider seasonal requirements and climatic conditions as well as existing livestock and crop conditions.

There are some basic criteria, in our opinion, which must be in any program of this kind to be workable and beneficial for

agriculture, the employer and employee alike. They are:

- **Authority for administering an H-2 worker program for agriculture should be assigned to the U.S. Department of Agriculture, with a specific provision that the Immigration and Naturalization Service, not the Department of Labor, be authorized to specify the length of time an H-2 worker could remain in this country.
- **The H-2 worker program should be streamlined to only require a one-time filing of full documentation. When approved, the material would be kept on file as "Master Application" which could be updated annually to indicate any changes in number of H-2 workers requested, changes in dates, wages to be paid that year, and any other pertinent changes.
- **The local labor market, for labor certification purposes, should mean the area from which workers can and would be willing to commute on a daily basis.
- **The H-2 program should have minimum recruitment standards.
- **Employers should not be required to retain any either domestic or H-2 workers of unacceptably low productivity beyond a reasonable time.
- **Employer liability and responsibility to worker benefits for housing and food should be included as in establishing the documented prevailing wage rate.

EMPLOYER SANCTIONS

The NCA realizes fully that the purpose of providing for

employer sanctions is to reduce the incentive for aliens to enter the U.S. illegally in their search for work. Presumably, illegals unable to find work will voluntarily return home. However, we are concerned that such sanctions are being made overly severe to counter an ineffective direct enforcement program. In effect, the intent of the current bill puts the burden of immigration control on a secondary deterrent system and fails to address properly the role of a primary deterrent system which should be the responsibility of the border patrol and other law enforcement agencies.

Stopping a potential problem at the point of origin is always better than trying to control it after it has become a problem. Without a more effective direct enforcement of immigration laws at the point of origin, we fear that the flow of illegal aliens into the U.S. will not be significantly reduced. Common sense tells us that undocumented aliens will simply search more aggressively for an employer willing to hire them in disregard of the fact that they are not authorized for employment. They will seek casual employment and, with some success, will have no incentive to return home where even casual employment is a luxury. It should also be noted that the Act's sanctions are not intended to apply to casual hires (i.e., those that do not involve the employer-employee relationship). Although they will be, by definition, unemployed, it is better to be unemployed in a rich country than in a poor one.

Section 101(a) (2) of the Act makes it unlawful to knowingly continue to employ unauthorized aliens if they were hired after the effective date of the Act. The insertion of the word "knowing" makes this an intentional crime, requiring a showing of knowledge

(or gross disregard for determination) that the employee was undocumented.

The bill requires that employers first be warned of violations of the Act prior to the commencement of civil sanctions. See, Section 101 (a) (1) (A). This warning will not carry any legal detriment and is only issued to warn the employer of violations. Once the citation has been issued; however, any (intentional) violations of the Act invite the following civil and criminal sanctions.

Step 1 - An employer who has not previously been subject to civil sanction for violation of the Act shall be subject to a \$1,000 fine for each unauthorized alien involved in the violation.

Step 2 - An employer who has been previously fined once will be subject to a \$2,000 fine for each unauthorized alien involved in the violation.

Step 3 - An employer who has previously been fined two or more times for employment violations (Sec. 101(a) (1) or (2)) of the Act shall be fined not more than \$3,000, imprisoned for not more than one year (Federal misdemeanor), or both for each unauthorized alien involved in the violation. The Attorney General does have the option of continuing to proceed civilly as opposed to criminally. See, Committee Report 98-115, pt. 1, pg. 43.

Step 4 - The Act provides the U.S. District Courts with authority to enjoin employers from engaging in a "pattern or practice" of illegal employment. The action

will be brought by the Attorney General.

Sanctions may be imposed after the employer has been served with notice and has either requested a hearing before an administrative law judge or has waived the right to a hearing (by not requesting one). If no hearing is requested, the Attorney General shall assess the employer and the assessment is final and unappealable. If a hearing is requested, the party adversely affected by the order may seek review within 60 days in the appropriate Court of Appeals.

There are several areas where employer sanctions raise potential problems:

- 1) If a hearing is not requested pursuant to Section 101 (d) (4) (A) (i) of the Act, then the Attorney General may immediately institute a collection suit. This provision does not provide any safety net.

- 2) The Committee Report 98-115, pt. 1, provides that a corporation which has numerous subdivisions that hire independently of each other would be held jointly liable for the violations of its subdivisions.

- 3) The Act does not provide for a determination of whether the initial citation was issued for cause and does not allow for judicial review of the issuance of a citation.

- 4) The Committee Report reference to "casual hire" is confusing and may cause problems in the future.

- 5) Sanctions may lead to employer "sensitivity" towards hiring individuals, i.e., Hispanics and Asians, thereby causing a discriminatory effect.

It is the view of NCA that the civil money penalties of the dollar amounts specified provide sufficient incentive to employers to hire only documented workers. In no way can we endorse or accept the concept that employer sanctions should include criminal penalties making a convicted felon of an otherwise law abiding, tax paying employer.

Mr. Chairman, I have attached to this testimony three amendments which more adequately address the penalties portion of this proposed Act.

The NCA is willing and anxious to work with members of this committee and staff to produce legislation that will help to correct the existing illegal alien problems. We must, however, keep in mind that agriculture needs an adequate labor force at the right time to continue to assure consumers adequate food and fiber supplies at reasonable prices.

We appreciate the opportunity to be here.

H.R. 1510

SUGGESTED AMENDMENT. DELETIONS LINED OUT -- NEW MATERIAL UNDERScoreD.

Civil Money Penalties

Page 9, line 5 - 9

"(i) has not previously been subject to a civil penalty under this subparagraph, the person or entity ~~shall~~ may be subject to a civil penalty of up to \$1,000 for each unauthorized alien with respect to which the violation occurred, or"

H.R. 1510

SUGGESTED AMENDMENT. DELETIONS LINED OUT -- NEW MATERIAL UNDERSCORED

Civil Money Penalties

Page 9, line 10 - 14

"(ii) has previously been subject to a civil penalty under this subparagraph, the person or entity ~~shall~~ may be subject to a civil penalty of up to \$2,000 for each unauthorized alien with respect to which the violation occurred."

H.R. 1510

SUGGESTED AMENDMENT. DELETIONS LINED OUT -- NEW MATERIAL UNDERSCORED.

Deletion of Criminal Penalties

Page 9, line 15 - 20

"(iii) has previously been subject to a civil penalty under this subparagraph in more than one instance, the person or entity shall be fined ~~not more than~~ up to \$3,000, \$5,000, ~~imprisoned not more than one year, or both~~ for each unauthorized alien with respect to which the violation occurred.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE HOUSE AGRICULTURE COMMITTEE
RE: H.R. 1510 IMMIGRATION REFORM AND CONTROL ACT OF 1983

Presented by C. H. Fields
Assistant Director
National Affairs Division

June 15, 1983

The American Farm Bureau Federation is the nation's largest general farm organization, representing more than three million families in 48 states and Puerto Rico who are members of more than 2,800 county Farm Bureaus, and who have joined voluntarily and pay dues annually to finance the organization. We estimate that at least 85 percent of the farmers and ranchers in this country are members.

We are pleased that this Committee requested and received reference to this bill and has scheduled this hearing to assess the impact this legislation would have on agricultural production and to consider ways in which the bill might be further improved.

FARM BUREAU POLICY REVIEW

Last January the State Farm Bureau voting delegates who participated in the 64th annual meeting of the American Farm Bureau Federation, adopted an extensive statement on immigration policies. We will not review that entire policy statement here since the jurisdiction of this Committee is limited to certain provisions of the bill.

The basic Farm Bureau position is that if Congress changes the immigration law in such a way as to adversely affect the present farm labor pool by the enactment of sanctions on employers who hire undocumented workers, "it is imperative to provide workable temporary foreign worker programs for agriculture."

"These programs must give reasonable assurance that such workers can be recruited on a timely basis when neither employers nor the employment service can find U.S. workers who are willing, capable and available in the area of need."

"The programs must be sufficiently flexible to provide for the labor needs of agricultural employers that produce highly seasonal, labor intensive commodities."

"Such programs should also provide for employment of refugees and other undocumented workers already here who seek agricultural work."

Finally, Farm Bureau policy asks that laws governing the apprehension of illegal aliens "should be carried out uniformly and equally in all industries. Entry to farms and agricultural operations should be permitted only when immigration officials hold properly executed warrants which name individuals that are being sought..."

It is clear from this review of Farm Bureau policy that our members and leaders have given considerable thought to the immigration and naturalization policies of this country. We recognize that it is a prime responsibility of the federal government to control the borders of our country, and we share the concern of most Americans that changes are needed to restore and ensure that control. It is obvious to us that illegal entries have gotten out of control. We believe that as a matter of basic policy, the federal government must regulate and control who comes into this country and how many. We have no doubt that hundreds of millions of people in other countries would like to emigrate to this country to share our liberties and the fruits of our capitalist economy; but there is a limit to our ability to accommodate them.

AGRICULTURE AND ALIEN WORKERS

A great many farmers and ranchers have for many years been closely associated with aliens coming to this country either legally or illegally to work and to enjoy our way of life. We have come to have a high regard for them. We find them highly motivated, eager to work, to save, and to be a productive force in our industry and in our country. Many come here at great personal sacrifice to escape abject poverty and tyranny in countries that have degenerated into socialism or military dictatorships.

Because of the ready availability of such persons and because Americans are not willing, able or available to take a great many of the seasonal jobs in agriculture our conservative estimate is that some 300 000 undocumented workers are currently employed on our farms and ranches, representing about 15 percent of the hired farm workforce, though probably only 7 percent of the total of such workers employed in this country.

It is simply not true that most agricultural employers want to employ illegal aliens because it is a source of cheap labor. They employ them because they are available and because they are highly productive. So long as American citizens have the benefit of various social protection programs they are not willing to leave their places of residence, go to rural areas and take seasonal jobs.

During the past two years, we have attempted to work with the Judiciary Committee and its staff, with the Senate Committee and its staff, with representatives of the Departments of Justice, Agriculture and Labor, and with other members of Congress in fashioning immigration reform legislation that would not create a disastrous situation for a major segment of American agriculture.

We opposed and continue to oppose criminal sanctions on employers as provided in the bill now before this Committee. We place major emphasis on Section 211, which seeks to provide for improved procedures to admit nonimmigrants to take seasonal jobs in agriculture,

where it can be demonstrated that Americans are not willing, able and available to perform such work.

For the past several weeks, we have been meeting with representatives of a number of agricultural producer groups from the major areas of the country to analyze the legislation being proposed in both houses, and to develop proposals and strategy to achieve a workable foreign guest worker or seasonal program for agriculture.

It needs to be borne in mind that a great many agricultural employers have become dependent upon undocumented workers. The enactment of the legislation before us creates great uncertainties for agriculture. We do not know, nor does anyone exactly how many such workers are currently employed in agriculture where they are employed how many would apply for or would qualify for legalization, or how many who achieve legal status would choose to continue working on farms and ranches.

The very nature of agricultural production, particularly of the fruits, vegetables and other crops that require large numbers of seasonal field workers is that the required labor must be available when nature dictates not when some government official in Washington, D.C., or some regional office of the Department of Labor decides to allow access to the needed workers.

PROGRESS TO DATE

During the past two years, we in agriculture have had considerable success in achieving some changes in both the Senate and House bills. These provide some assurance that if a significant portion of the undocumented workers now working on farms and ranches are no longer employable, we would have a workable program to obtain the needed supplementary foreign workers on a legal basis. We appreciate the efforts of Congressman Mazzoli, Senator Simpson, and other members of the two Judiciary Committees in their recognition of the special employment problems in agriculture, and the changes that have been made in the bills originally introduced that respond to those problems.

However, we believe that some additional changes are needed to provide greater assurance that agriculture will be able to secure the needed seasonal workers when and where they are required.

We realize that it is neither desirable nor feasible for Congress to write every detail concerning the operation of the supplementary agricultural labor program into the statute, and that a balance must be struck between statutory requirements and regulatory decisions; but we believe some additional statutory provisions are desirable.

SPECIFIC RECOMMENDATIONS

We recommend that this Committee write a report on this bill that includes (a) recommendations for clarification, interpretation and guidelines for the development of regulations; and (b) specific amendments to provisions of the bill.

With regard to clarification and interpretation, we call attention to the following points:

1. Labor Disputes. Section 211 provides that existing regulations be followed so that H-2 workers are not employed to fill positions of workers who are on strike or have been locked out. This must be clarified, since the existing regulations of the Department of Labor and the Attorney General (Immigration and Naturalization Service) on this matter are not in agreement. Under the INS regulation on two or more workers at a worksite regardless of how many are employed there can close off the H-2 program entirely to an employer. The DOL regulation requires that an H-2 worker not be employed to fill any position where a worker is on strike. The INS regulation presents a real threat to the future operation of the H-2 program.

2. Federal Preemption. S. 529 provides for federal preemption on the employment of H-2 workers, while H.R. 1510 does not. This Committee should recommend that House conferees accept this provision of the Senate bill.

3. Denial of Access. The House bill provides that an employer could be denied access to H-2 workers for up to three years when found guilty of a substantial violation of the Act or regulations. This Committee should recommend House acceptance of the Senate provision which provides for a denial of one year, which we believe to be an adequate deterrent.

4. Housing Allowance. Section 211 of H.R. 1510 permits an employer, at his or her option, to substitute a reasonable housing allowance in lieu of providing free housing if acceptable housing is available in the proximate area of employment. It is not clear in reading this language whether this applies only to H-2 workers or also to domestic workers who live within commuting distance of the workplace. This is an important point that should be mentioned in this Committee's report and a clarification should be sought through a colloquy on the floor that would become a part of the legislative history of the bill.

5. Transfer of Workers. The language of the present Title 20, Part 655 regulations of the Department of Labor is not clear regarding the ease with which H-2 workers may be transferred from one certified employer to another, particularly those involving numerous commodities requiring short periods of employment. This is one of the keys to the successful operation of an expanded H-2 program. This Committee

should recommend that the regulations provide for maximum feasible flexibility in this regard, with a minimum of bureaucratic procedure. It should be possible for workers to be transferred on short notice, if they are willing, from one certified employer to another, simply by prompt notification to INS by the employer who transfers the workers.

6. Transition Program. Both the Senate and House bills provide for a 3-year transition program--though somewhat different in detail--to assist agricultural employers in making a gradual shift from the employment of undocumented workers to domestic, H-2 or "legalized" aliens. It is important that this Committee's report include an admonition that the regulations governing this short-lived program contain a bare minimum of red tape. If this program becomes loaded down within burdensome regulatory procedures, it will be of no value to employers and will thwart the clear intention of Congress.

The following are amendments that we recommend the Committee offer for consideration of the House:

1. Length of Stay. Section 211(b)(1) gives the Secretary of Labor authority to determine by regulation the maximum aggregate period of time an H-2 worker may stay in this country. We agree that the statute should not set the maximum stay. We favor an amendment giving the determination to the Attorney General, which would be a continuation of the present situation.

2. Adverse Effect Wage Rates. Section 211(b)(3) provides that a petition to import an alien under the H-2 section may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that (1) there are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Similar language is contained in the current Act. The Secretary of Labor, acting under this general directive has for many years promulgated adverse effect wage rates, using a formula to adjust upward from the previous year's adverse effect rate for a particular state. In the past, the basic data for these determinations has come from quarterly farm labor surveys of the Department of Agriculture. During the last two years the detail and frequency of the USDA surveys have been greatly curtailed, resulting in data that is not reliable for individual states. Fruit producers in West Virginia and the Department of Labor now find themselves in court due to this situation.

We request this Committee propose an amendment to the bill that would correct the uncertainty of this matter in the future and hopefully solve the current dilemma in the West Virginia situation. We have been working with a member of the Committee in developing

appropriate language for such an amendment. The amendment will not in any way have an adverse effect on wages that must be paid to workers; but will specify procedures that must be followed in assuring that wages paid to H-2 workers not have a depressing effect on wages paid to domestic workers similarly employed.

3. Multiple-year Certification. The Department of Labor is going to be faced with a significant increase in the petitions filed by employers for the employment of supplementary foreign workers under the H-2 program. The present certification procedure is unduly burdensome and should be streamlined to reduce the volume of paperwork. We support an amendment to the bill to authorize the Secretary of Labor to issue multiple-year certifications, utilizing an initial detailed petition by an employer, followed by an annual one-page addendum to update any changed circumstances. To assure that domestic workers are not deprived of the opportunity to fill the available jobs, the Secretary could withdraw certification during any of the subsequent years of the multiple-year certification.

4. Employment Service Documentation. Section 101 of the bill provides that employers be required to examine and record certain documents to establish a good faith compliance if accused of knowingly employing an undocumented worker. It is not clear from reading the language reported by the Judiciary Committee or the report of that Committee whether or not a public agency, such as the federal/state employment service must comply with the required examination and record-keeping of documentation when referring workers to an employer.

We believe the bill should make it clear that any public agency that refers workers should comply with Section 101 concerning documentation and record-keeping. When a grower applies for certification of H-2 foreign workers, he must file a job offer with the Employment Service and must employ qualified domestic workers referred to him by the Service before qualifying for the supplementary foreign workers. It makes absolutely no sense for the Employment Service to send undocumented workers to an employer that he cannot employ, and it makes no sense for an employer to be required to duplicate the documentation or record-keeping on any worker so referred. If this Committee determines that clarification is needed to accomplish this result, we recommend that an appropriate amendment be offered.

5. Criminal Sanctions. Section 101 of the House bill requires that a \$1,000 civil money penalty be assessed for each undocumented worker hired in the instance of a first knowing violation. A second offense mandates a \$2,000 penalty per illegal worker hired. Where an employer is found guilty of a pattern or practice of hiring undocumented workers, the bill mandates a penalty of up to \$3,000 or one year in jail or both per undocumented worker. We believe the criminal penalty is excessive and unnecessary to deter and punish violators, and that the stated civil penalties should be stated as a maximum. We ask the Committee to propose an amendment to remove the criminal penalty, increase the civil penalty for pattern or practice of hiring

illegals, and insert the words "up to" preceding the dollar amounts of the civil penalties.

ALTERNATIVE PROGRAM FOR SHORT-SEASON PERISHABLE CROPS

We fully support the proposal presented by the Farm Labor Alliance to create an alternative supplemental foreign worker program for perishable commodities that would be more flexible, involve a minimum of bureaucratic procedures, not be employer-specific, and make it easier for the workers to be transferred from one employer to another. We believe the Alliance has presented telling arguments indicating that the H-2 program, though greatly improved as compared with the current system, is not likely to be effective and adequate to meet the seasonal labor needs of employers in areas of heavy agricultural employment where highly seasonal, short-season crops are produced. We ask the Committee to give careful consideration to this proposal and will support an amendment to the bill to provide for its implementation.

CONCLUSION

With the enactment of this immigration reform legislation, agricultural employers will face a greatly altered situation and a period of great uncertainty. The new situation will require far-reaching adjustment in the recruitment and employment of a significant portion of the hired farm workforce. Farmers and ranchers would like to employ all domestic workers; but they know from experience this is not possible for a variety of reasons. They are law-abiding citizens and will want to abide by this new law. It is incumbent upon this Committee and the Congress as a whole to take every reasonable step to assure that the labor needs of agriculture are not unduly endangered by this legislation. With the improvements that have already been made in the Senate and in the House Judiciary Committee, and with the further clarifications and improvements we have recommended for the support of this Committee, we believe the legislation can accomplish its worthy purpose without creating a chaotic and disastrous situation in agriculture. This is our goal and we feel sure it will be the goal of this Committee.

We appreciate the opportunity to present our views.

STATEMENT OF THE UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION
AND THE WESTERN GROWERS ASSOCIATION
TO THE COMMITTEE ON AGRICULTURE OF THE U.S. HOUSE OF REPRESENTATIVES

June 15, 1983

Presented by Peter Martori

I am Peter Martori speaking on behalf of the United Fresh Fruit and Vegetable Association and the Western Growers Association.

The United Fresh Fruit and Vegetable Association (United), Alexandria, Virginia, is the national trade association of the fresh produce industry. Its 2600 member companies handle over 80 percent of the fresh fruits and vegetables commercially marketed in the U.S. and are involved in all facets of the industry including growing, shipping, and distributing fresh fruits and vegetables.

The Western Growers Association (WGA), Irvine, California is a trade association representing growers, shippers and packers. Its members produce the vast majority of the fresh fruits and vegetables grown in the states of California and Arizona.

Mr. Chairman and members of the committee we want to thank you for holding these hearings on a bill which has become a most important issue for the entire fresh fruit and vegetable industry.

Without question, the fresh fruit and vegetable industry is the most labor intensive segment of agriculture in the United States. Because of this dependence on domestic and foreign workers to harvest fresh fruits and vegetables, the industry is vitally concerned with the "Immigration Reform and Control Act of 1983", HR 1510 which is pending before this Congress. The legislation for the first time in many years would reform the nation's immigration laws and would modify the existing Department of Labor supplemental foreign worker program (H-2).

Earlier this year the United Fresh Fruit and Vegetable Association reaffirmed its policy on immigration reform. The policy states that it is essential that an adequate labor force be available for the production and harvesting needs of the agricultural industry and that the achievement of this goal may necessitate the employment of non-resident labor. However, before this association will accept any proposal incorporating sanctions against employers of undocumented workers, employers must be assured of an adequate work force and a practical means of positive identification. United also feels that any proposed legislation must provide for consideration of the seasonal nature of agriculture's labor needs.

Western Growers Association's policy statement embodies all of the concepts outlined by United.

The fresh fruit and vegetable industry continues to object to the notion that employers should be utilized as the primary means of enforcing the nation's immigration laws. No matter what legislation is finally passed by this Congress, increased enforcement along this country's borders with Canada, Mexico and at other points of entry must be considered if this country is serious about stemming the flow of illegal immigration.

However, if the employer sanction provisions remain in this legislation, the fresh fruit and vegetable industry must be assured that it will have an adequate supplemental labor force through a reliable and effective foreign worker program. As stated before it is estimated that over 300,000 seasonal workers per year will be needed to meet the labor needs of the industry if the employer sanction provisions remain in the bill.

Fresh fruits and vegetables, for the most part, are highly perishable commodities. Harvesting must occur as soon as possible after the appropriate level of maturity is reached. The maturity of these commodities depends on many factors over which growers have little or no control. Not the least of which is the peculiarities associated with weather. Our growers and shippers do not have the luxury of waiting several days to arrange for an adequate work force. They must have a sufficient number of workers at the time and at the place of need if we as an industry are to be able to supply a bountiful harvest of fresh produce to the nation's citizens. Any supplemental foreign worker program that Congress approves must be flexible and reliable enough to meet the labor needs of this highly labor intensive industry.

Time and time again, the industry has attempted to hire an adequate number of U.S. workers. Unfortunately in virtually all instances we are left with the same inevitable conclusion. A sufficient number of domestic workers who are willing, able, qualified and available to perform the tasks required does not exist. Domestic labor sources have not and can not provide sufficiently dependable and qualified workers to meet the needs of this industry. A workable supplemental foreign labor program is essential if our industry is to continue to provide the highest quality fruits and vegetables at a reasonable cost to consumers.

As an example, following highly publicized border patrol raids of strawberry fields in southern California, the growers attempted to hire domestic workers through the state employment department. Although offering wages from \$5.00 to \$10.00 per hour, most employees referred did not work more than a few hours.

A 1982 survey conducted by the California Cooperative Extension Service indicates that growers in the state of California have paid seasonal workers wages well above the minimum wage. This survey indicated an average hourly wage of \$5.14 per hour, with 17 percent of the seasonal workers earning above \$6.00 an hour.

The "Immigration Reform and Control Act of 1983" HR 1510 which recently emerged from the House Judiciary Committee attempts to meet the supplemental labor needs of the fresh fruit and vegetable industry by modifying many aspects of the now

very cumbersome and bureaucratic Department of Labor administered H-2 supplemental foreign worker program. Due to the employer sanction provisions, the legislation would require our members, if sufficient numbers of domestic workers are unavailable for hire, to utilize this H-2 program.

The H-2 program has been successfully utilized on a very limited basis for a number of years. Those producers of apples in the Northeast, sugar cane, tobacco and sheep have been the primary users of H-2 workers. In fact according to Department of Labor statistics for 1980 only 18,371 foreign workers were certified under the H-2 program and actually worked in agriculture. The number of H-2 workers averages about 15,000 per year.

Again, the House Judiciary Committee has done an admirable job in attempting to balance the needs of the agricultural community and the needs of controlling illegal immigration. However, many aspects of the bill still would adversely impact the labor needs of the fresh fruit and vegetable industry. We also understand that attempts will be made on the floor of the House to delete many of the more favorable aspects of the bill.

My colleagues on this panel will describe in detail many areas in the bill of concern to the agricultural community. The United Fresh Fruit and Vegetable Association and Western Growers Association fully supports their views. We respectfully request that this committee seriously consider those comments and to incorporate those recommendations into their report and into any amendments that the committee will be seeking.

Three other issues are also of paramount importance to the agricultural community - the need for a workable definition in the H-2 program of the term "labor dispute"; a federal preemption of any state or local law that would prevent employers from hiring foreign workers under an H-2 program or other supplemental foreign worker program; and employment services should be required to verify the eligibility of those workers they intend to refer to employers.

Under current regulations of the Department of Labor and the Immigration and Naturalization Service, any two or more persons at a job site can create a labor dispute. This situation under current regulations prevents an employer from being certified under the H-2 program and thereby prevents him from obtaining needed foreign workers. Severe disruption of a farmer's harvesting operations have often resulted from this action.

Unfortunately, the House bill would result in the retention of this definition. We are hopeful that a provision can be included in the bill making it clear that a supplemental foreign agricultural worker cannot be used as a strike breaker to replace a bona fide employee who is on strike or locked out. However, it should also make clear that H-2 supplemental foreign agricultural workers are not barred from filling other jobs at the same work site that are vacant because domestic workers cannot be found.

The legislation also needs to be amended to specifically provide for federal preemption. Congressional concern about the legal admission of aliens seeking employment in this country has led to the carefully balanced provisions included in this legislation. It is essential that Congress clearly and concisely indicate that the admission of nonimmigrant workers is a matter of overriding

national policy. The Senate bill does contain a federal preemption clause.

Two bills now pending before the California legislature would preclude Californians from participating in any supplemental foreign worker program. Individual states must not be allowed to cut-off a farmer's labor supply, particularly if the H-2 program is the only program available to a grower to meet his labor needs.

The House bill now contains language that requires the Federal/State Employment Service to verify the eligibility of workers prior to referring those workers to employers. In those cases where employers obtain workers through the Employment Service they will be assured that this governmental entity has checked whether those workers are legally able to work in this country. This will eliminate some of the paperwork and enforcement burden which have unfortunately been placed on employers. We are in complete support of this provision. Unfortunately, we understand that attempts will be made on the House floor to defeat this provision.

Equity is all that we are asking for in this matter. The first entity who hires, refers or recruits should have the responsibility of determining the eligibility of workers.

We can best describe the reason for needing this provision by offering the following example. A grower applies for H-2 workers and is informed by a Federal/State Employment Service that there are domestic workers available. Through the normal procedures he interviews the prospective employees and decides to hire a few of them. The number of workers certified, of course, is then reduced by the number of domestic workers referred. Unfortunately, once the domestic workers arrive at the place of employment it is discovered that several of these workers are not legally in this country. The employer is then faced with a situation in which he has to turn away those workers and is then left with an inadequate number of workers to harvest his perishable crops.

This provision in the House bill will prevent this situation from occurring by requiring the Federal/State Employment Service agencies to refer only eligible workers.

We feel that the modifications to the H-2 program, as provided for in HR 1510 and those we have recommended, will result in a more streamlined H-2 program for fruit and vegetable employers. However, we continue to be concerned that the additional estimated 300,000 foreign workers that will be needed by this industry if the bill passes will never be certified in a timely manner by the Department of Labor.

Therefore, we propose that those employers who opt to do so be given the opportunity to avail themselves of an open-market type foreign worker program. Such a program would be designed as a more flexible alternative that would better meet the needs of those employers growing the most highly perishable and labor intensive fresh fruits and vegetables.

Mr. Chairman and members of the committee, we once again want to thank you for giving us this opportunity to present our views on this most important legislation.

STATEMENT OF MICHAEL G. GEORGE
TO THE
COMMITTEE ON AGRICULTURE
OF THE
HOUSE OF REPRESENTATIVES
June 15, 1983

My name is Micky George. My family and I operate a farm in Sultana, California (Tulare County) and are involved in the production, packing and shipping of fresh plums, peaches, nectarines and grapes. Through our packing/shipping operation, we also handle produce on a commercial basis for independent growers. About half of what we pack and ship is produced from our own farming operation, and the other half is from commercial grower accounts. Currently, we ship 25 varieties of plums, 17 varieties of peaches, 27 varieties of nectarines and 6 varieties of grapes in a season which runs from May to November. These fruits are living organisms that are in a constant state of maturation and decay, and require exacting procedures for production, harvesting, packing and marketing.

My purpose for offering this testimony is to explain to you the need for a seasonal foreign worker program that works in the dynamic employment conditions found on the production of many perishable crops. While I basically present

this testimony as a farmer, I also am representing the Farm Labor Alliance and its members -- the California Grape and Tree Fruit League, Nisei Farmers League, California Farm Bureau Federation, Northwest Horticultural Council, Agricultural Producers, Raisin Bargaining Association, Sun Diamond, numerous county farm bureaus and western Growers Association. These organizations represent growers of perishable crops in California, Arizona, Oregon and Washington, most of whom face problems similar to those described in my testimony.

Farming Operations and Conditions

As a matter of routine, we assume the responsibility and coordinate all field labor activities both for our own farming operation and for our commercial grower accounts. The recruitment is carried out by crew supervisors and draws from our local area within about a twenty-five mile radius.

Our field work year really begins in Novmeber, just after the completion of the fall grape harvest, with pruning in preparation for the next year's crop. This process customarily runs to about mid-February. While this may be considered the

most stable time of the year for us, in terms of labor requirement fluctuation, it is also the time when we have a need for the more highly skilled worker.

Beginning in early April, the pace of our work gains momentum with the onset of the thinning season, which has an intensive labor requirement. Depending on a number of factors, the labor requirement can and does fluctuate, depending on varieties, weather and cropset. Timeliness is critical, particularly in the case of the earlier season tree fruit varieties and grapes. In some cases, the labor requirements for grapes reaches its peak at thinning time. This period ordinarily runs from early April to mid-June and overlaps with the harvest season which gets underway about mid-May.

The harvest season is the most critical time of year in terms of our labor requirement. It is not only the period during which our labor needs are usually at the annual peak, but is also the time of the most fluctuation of need. The crops with which I am involved are among the most perishable of all agricultural commodities, and timeliness of harvest is paramount. ~~With many varieties, that timeliness must be~~

reckoned with in terms of hours, or that entire variety may be lost. It is an impossibility to precisely project our labor requirement months in advance because of variables resuting from weather, primarily, but also from a number of physiological factors with the trees and vines which fluctuate from year to year. Without the flexibility to accommodate those variables, the highly perishable crops which we now produce would either have to be produced somewhere else where a reliable labor supply existed or, in the short run, be produced at low levels of productivity, resulting in a competitive disadvantage.

Please find attached, a list of the average man days per month which were required for our operation last year and for this year to date. As you will note, our labor force is anything but static. In 1982, our average monthly field labor force was 202 employees. When examined more closely, this labor force varied from a low of only 8 percent of average in March to 179 percent of average in July. The month-to-month variances are significant, with generally the least variation in the December-February period (average 16 percent monthly variation) and the greatest variation in March, April and July

(average 87 percent monthly variation). It is also interesting to compare the 1983 manpower figures with those for 1982. Not only are the monthly totals significantly different, but the timing is altered. For example, in January 1983, 19 percent more employees were hired than in January, 1982; yet for February 13 percent less were hired in 1983 as compared to 1982. Overall, for the first five months, 31 percent more employees were hired in 1983 than in 1982.

These numbers clearly indicate the high variability in need for field crews and the unpredictability of labor demand. Reasons for the variations are numerous; weather, soil conditions, varietal characteristics, plant stress, even market conditions all play a role in the timing for and number of field employees.

My situation is not an extreme. Indeed, because our operation is more diverse than the norm, I am able to utilize crews in a more "stable" fashion.

I cite here some facts drawn up by a farming neighbor of mine -- LeRoy Giannini -- who shares my concern about

immigration reform and who has taken the time to study the potential impact of a rigid farm worker program on an intense and diversified agriculture:

"Data obtained from the Kings River Conservation District (only one river farming delta among many in California), show that there are approximately 10,000 water users in the roughly one million acres which make up its multi-commodity delta service area. In the river's three (3) "upper" water districts, the Fresno, Consolidated and Alta, which comprise a combined total of almost half the river's water service, there are approximately 445,000 acres and over 19,000 individual ditch water turnouts, an average of less than 30 acres per farm.

Data obtained from the Sun-Maid Raisin Growers Association, and also from the California Raisin Advisory Board, concur that, depending upon crop size, etc., between 35,000 and 40,000 grape pickers are required each fall to lay down the drying trays for approximately 4,450 individual growers on 140,000 acres of raisin vineyards in a 21 to 30 day period. The average size of those vineyards is only 31 acres. They must compete for workers with the multi-million ton wine grape harvest and many other fall farm activities which are going on simultaneously. The raisin-lay picture is probably as vulnerable as any perishable commodity...for their annual feverish harvesting race against the weather leaves their entire year's production in the hands of the elements. Migratory workers use the raisin lay as the last leg of their annual California work tour.... They are quick to say that it would not pay for them to make the long trek to

Central California from their homes in Mexico for the short three or four week raisin lay alone.

For raisin growers, it is imperative that the great 'worker pool' from which their crop harvesters come, are permitted to start their migratory job cycle months ahead in the early spring, making it sufficiently encouraging for them to remain in the area until fall.

Another prime example of the tremendous need for flexibility in manpower availability is the situation of a prominent California stone fruit grower/shipper whose labor force skyrockets from almost nil to over 1,500 during a 10 to 14 day labor intense harvesting period...after which his work load requirements plummet back down to virtually zero again."¹

Further evidence of how diverse and complex California agriculture is can be found in the statistics. California is the largest single producer of perishable crops and its production figures illustrate the importance of this industry to California and the nation. The highly seasonal production of fresh fruits, vegetables and nuts represents over \$6 billion, or 45 percent, of the annual sales of agricultural products grown in California. There are approximately 25,000 farms in California devoted to raising these products on 10 percent of the total number of acres in agricultural production. Of the 260 or so crops grown in

¹Giannini, LeRoy, statement to Ron Mazzoli, dated March 25, 1982, pp. 5-6.

California, 150, or nearly 60 percent of them, are perishable. There is no question that this is not only a large and vital industry to California but also to the rest of the nation, which receives 45 percent of its fresh fruit and vegetables from these farmers.²

Although the production of perishable commodities is a large business, it is, in most instances, the product of small farmers. The typical farm engaged in the production of perishable commodities averages between approximately 100 to 200 acres, while the average farm producing other crops is nearly 500 acres. Actually, the 100 to 200 acre figure is inflated because the large growing areas required by grape vineyards raises the average. In fact, perishable crops are produced by hundreds of small farmers on farms ranging between 30 to 50 acres.³

In addition to the number of perishable crops, there can be scores of varieties of each crop. For example, fresh market peach varieties number over 140, nectarines over 100, and plums over 125.⁴ Each crop variety has its own

²Statistics provided by the Council of California Growers.

³Id.

⁴California Tree Fruit Agreement Annual Report--1982.

cultural requirements (thinning, crop protection, irrigating, girdling, leaf pulling, etc.), its own harvest schedule and its own requirements for labor.

Today, we have an adequate availability of field labor for producing perishable crops. The vast majority are Hispanics who are in this country legally and illegally. These workers come to be employed through a variety of means: farm labor contractors, crew supervisors, labor union hiring halls, state employment services, labor associations and individually. There is a functioning network in place that works to have the employees available where needed, when needed--an absolute must requirement for perishable crops.

The migrant workers, upon whom western growers of perishables have had to rely, have established work patterns that may involve local or regional migration. This migration distinguishes the eastern grower who may be able to use the H-2 program and the western grower who cannot.⁵ These

⁵Statement of A. James Barnes, General Counsel, U.S. Department of Agriculture, reported in H. Rep. No. 115, Pt. 1, 98th Congress, 1st Session 98 (1983).

workers have the flexibility to follow the harvesting of each of the numerous perishable crops as they ripen.⁶ They are able to follow a path south to north in accordance with the growing season and are not restricted to a particular farm or employer, as is the case with workers brought into this country under the H-2 program. This migration has been very effective in meeting the production needs of growers and represents the product of an intelligence system that has developed and directs migrant workers to work opportunities at a particular crop at the appropriate time. This unstructured but highly effective system has provided the necessary manpower to harvest a large number of perishable crops that ripen in rapid succession. It is a workable approach because it does not depend upon the rigid and formal requirements of the H-2 certification process that prohibits migration and forces employers to guess when the crops will be ready to harvest.

Those who provide field crews play an important role in the many complex services that both the employer and the employee require. The peak season migratory worker recognizes that the annual work season lasts 90-180 days, and it is

⁶Id.

important that he/she not be idle during this short period. Many workers look to the contractor or other recruiters to help provide continuous employment with numerous producers of diversified crops. It is not uncommon under stringent harvesting conditions that individual workers be employed by more than one farmer on a given day. These complex placement arrangements are facilitated by the expertise of efficient contractors, crew leaders and others that schedule field forces.

"In the worker's view, conditions which would tend to limit or inhibit his/her work opportunity, making it economically impractical for him to join seasonal work offerings...., would tend to dangerously reduce the overall worker pool force in California."⁷

Of course, the conditions that I have described are particular to California specialty crop farming. I have not attempted to add in the complexities of farming in Arizona, Oregon, Washington or Idaho, with which we share our field labor. To do so would add further variables to the demand for labor on a seasonal basis.

⁷Id., Giannini, page 4-5.

Review of the H-2 Program

Let me state at the outset that I have never used the H-2 program. I do have some familiarity with its workings and based upon that understanding, I am convinced that the H-2 program alone can not satisfy the seasonal labor requirements of growers of perishable commodities located in the western states.

In their present form, the H-2 provisions of H.R. 1510 are superior to those in the Senate passed bill (S.529). The primary improvements in H.R. 1510 are the limitation of the advance petitioning requirement to obtain foreign workers at 50 days (as compared to 80 days in the Senate bill) and the requirement that petitioners be given notice of the acceptability of their petitions within 7 days. Also, the housing provision language of H.R. 1510 is an improvement over S.529. By its silence, S.529 leaves the issue of housing to regulations, which have an onerous history. Relief from sanctions when hiring workers referred from government employment services is also a practical feature not found in S.529.

The main deficiency of H.R. 1510 as compared to S.529, is the form of transition program. The provisions are very detailed in the House version, following closely to H-2

provisions but without a certification process. The Senate version allows the program to be developed in regulation, which at least offers some hope of a more workable, streamlined program.

Irrespective of the relative merits and weakness of the H-2 legislation as between House and Senate versions, the H-2 program by its nature is woefully inadequate for producers of perishable crops situated in complex and highly volatile employment conditions.

- A. The H-2 program is very rigid and tightly controlled by the Department of Labor and State Employment Services. The H-2 program, as I understand it, fails to recognize that there exists a regular need for foreign workers to fill jobs not desired by domestic employees. In my opinion, the paperwork requirements, certification processes, intensive local, intra and interstate recruitment of domestic workers, negotiating of effective work contracts, alteration of the terms of job orders as employment conditions change, all work together to stifle the availability of foreign workers and to prohibit the effective utilization of manpower in perishable crop production.

Clearly, if the program were designed and administered to provide a regular supply of seasonal foreign agricultural workers, we would not find the employment of only approximately 15,000 H-2 workers (of the total estimated 200,000 foreign agricultural workers employed in this country). It is revealing that in California, where the largest number of foreign farm workers are employed, that no H-2 workers are used in agricultural fields and only a few hundred are used in livestock operations.

- B. The H-2 certification process is not timely, places unreasonable demands and obligations on employees and employers, and is not adaptable to rapidly changing conditions. It is folly for me to try and estimate my labor requirements some 50 to 80 days in advance of need. The attached labor information fully supports this statement. I am aware that some latitude is granted in making normal changes in the request for labor prior to date of need, but this does not nearly suffice when changes occur daily, even after date of hire.

There is a shortage of domestic workers available to work on perishable commodities. The problem often presents itself when employers recruit domestic workers during the period in which they are awaiting H-2 certification. The Department of Labor (DOL) makes a determination as to the number of domestic workers determined to be available. It has been my experience, however, that those domestic workers who keep their commitments to work during a harvest often do not remain through its completion.

Since it is my understanding that the number of H-2 workers permitted under a contract depends on the estimate of available domestic workers, there is a likelihood there will be shortages of H-2 workers available to complete the harvest. The H-2 program does not have an adequate mechanism to correct such shortages and confronts the grower with the prospect of not completing the harvest in a timely manner. As pointed out later, the current system that allows free migration of workers compensates for this type of problem by allowing workers to move from crop to crop as they ripen and in response to grower needs for their services.

My understanding is that a provision of H.R. 1510 requires a 72 hour certification for additional foreign workers if the expected number of domestic employees doesn't show up. In 72 hours, I can lose an entire crop of plums, which quickly perish if not picked when ready.

Under H-2 certification, an employee can work for only that employer that he/she is contractually tied to. There is no freedom to change employers, to quit or to "follow the crops" unless prearranged under contract. Similarly, the farmer must meet a preset, fixed obligation to maintain the employment relationship regardless of changed circumstances (or at least 75 percent of the employment terms must be met, whether work is available or not). The implications of being "locked in" in a dynamic work environment are immense for both the employer and employees, in terms of lower productivity, wages earned and lost crops.

Some relief from the rigidity of the H-2 program may be available, but the solution is not without its own set of problems. I know that H.R. 1510 allows the formation of employer associations, which theoretically serve to smooth out the volatile labor demands of individual employers and more effectively schedule work for employees. Because of the large number of workers that is needed during the peak of the harvest season and the complexity of the program, every grower (save the largest, year around employer) will be forced to join an association. While an association of employers is a desirable feature of the legislation, it is inadequate because it deprives each constituent employer of control over the production and working conditions of his own workforce, and also subjects him to liability for the certification violations of any other employer member. An association of employers with access to a group of H-2 workers is a poor substitute for the existing migratory patterns described.

Finally, the certification process, with its employer obligations, is a public process. It affords an opportunity for the government and interested parties to assess if the employer's application, work order, job offer, description of housing, etc, are acceptable, and to interject opinion as to whether the burden of proof on recruitment, adverse effect on domestic employees, and other tests have been met. Those concluding that the employer has not met his burden may oppose, obstruct or delay the certification process.

- C. The substantial increase in H-2 petitions would prevent Department of Labor (DOL) from making timely H-2 eligibility Determinations. As earlier indicated, H-2 has not been widely used up to now. Estimates as to the number of foreign workers needed to produce perishable crops in the western states vary. There is no question that there is a substantial number, as reflected in the statistics.

A sample survey conducted in California in 1982, indicated that there were at least 130,000 persons involved in agricultural work on a seasonal basis.⁸ Another fairly recent study concluded that approximately 200,000 foreign migrant workers were employed in agriculture in the United States during the 1970's.⁹ Others feel that the number is as high as 500,000.¹⁰ Assuming even a conservative estimate of 150,000 migrant workers would be needed in California alone to produce perishable crops and would have to be obtained through the H-2 certification procedure. It is clear that the DOL would have extreme difficulty in handling this surge in certification requests. If it is use to handling only 15,000 to 20,000 agricultural H-2 workers annually, this legislation

⁸University of California Cooperative Extension, 1982 Agricultural Field Workweek Survey 1.

⁹Daly, Agricultural Employment: Has the Decline Ended?, Monthly Labor Rev., Nov. 1982, at 15.

¹⁰Statement of A. James Barnes, General Counsel, Department of Agriculture, reported in H. Rep. No. 115, Pt. 1, 98th Cong., 1st Sess. 98 (1983).

would dramatically increase their application demand. Even assuming DOL had the resources and trained manpower to handle these requests, it is highly unlikely that it would be able to make accurate determinations on these thousands of requests within the requisite time frame. Because perishable crops will not delay their harvest time to accomodate any administrative delays, the failure of the Senate and House legislative proposals to provide a streamlined certification process portends disaster for the grower of perishable commodities.

- D. The H-2 program with its administrative, legal and operating burdens, would unnecessarily increase the cost of farm labor. Every H-2 program that I am aware of requires specialists in recruitment, administration, legal dealings, negotiations, data processing, and transportation. These added costs are a result of a very detailed and demanding regulatory system; and they are compounded in an employment environment containing numerous crops and employers. The excessive costs that will result are not necessary

in a meaningful foreign worker program that has reasonable controls. Unfortunately, they can only serve to increase the cost of food.

The Needed Seasonal Foreign Worker Program

Some agricultural employers in the United States have been able to utilize the H-2 program. Less volatile employment conditions, more homogeneous farming operations with each growing area, traditional labor supply from countries not sharing a common border to the United States and the relatively small number of employees required, contribute to the ability of these employers to produce under the H-2 system.

I speak for all agricultural employers when I say that the H-2 program should be continued for those who can effectively utilize its provisions. Improvements have been made in the program as a result of H.R. 1510 and S.529. Additional corrections are sought, of which we are fully supportive and ask your favorable consideration.

It is essential to also provide a committee amendment that addresses the very real problems of many producers of perishable crops, as I've identified. Such an amendment would would not be a replacement of the regular H-2 program, but would authorize a narrower, complementary, program available to producers of perishable crops. Outlined below are some of the principles that should be included in a foreign seasonal worker program:

1. A new nonimmigrant visa category would be established for an alien coming to the United States to perform only agricultural labor, but limited to the production of "perishable commodities."
2. Employers who want to participate in the program would submit an application to the Attorney General specifying the number of aliens needed and the type of work to be performed. Based on the applications, historical employment patterns and availability of domestic agricultural workers, the Attorney General would establish monthly and annual numerical limitations by region on the issuance of nonimmigrant visas.

3. Nonimmigrant visas would be issued under a system, giving preference to aliens specifically identified in the applications and aliens who have been previously employed in seasonal agricultural employment in the United States.
4. Employers who are determined to be eligible may hire the foreign workers admitted under this program.
5. Seasonal foreign agricultural workers would not have to obtain a petition from any prospective employer in the United States in order to obtain a nonimmigrant visa under the program; or be limited from working for any eligible agricultural employer within region(s) established by the Attorney General.
6. Bilateral advisory commissions would be established with labor source countries in order to consult with and advise the Attorney General.

These would be the operative features of the amendment. The balance of the provision we envision would be control mechanisms to ensure the protection of employees (both foreign and domestic), employers and the public interest:

- o Employers would be required to make a good faith effort to recruit willing and qualified domestic agricultural workers in the area of intended employment.
- o Employers of H-2 workers could not participate in the program while employing H-2 workers.
- o Employers not recognized as eligible would incur substantial civil penalties if they are found to hire workers admitted under the program.
- o An employer would be excluded from future participation in the program for up to three years if he (she):
 - failed to recruit domestic workers;
 - also employed H-2 workers for the same period that he(she) had an application for workers under this program;
 - hired workers under this program for a job made vacant as a result of a lawful strike or lockout;

- violated basic labor standard requirements; or
 failed to assist in securing housing when appropriate.
- o Employers (eligible or not) who hire aliens admitted under this program after expiration of visas would be subject to sanctions established under Title I of the legislation.
- o Employees admitted under this program would have to be employed or actively seeking employment.
- o Employees violating the term or condition of a previous admission or who enter the U.S. unlawfully after the date of the program becomes effective, would be excluded from participation for five years.
- o Employees under the program would be encouraged to return home (after satisfying the terms of the visa) by the payment to them of an amount equivalent to the Social Security payroll tax applicable to employees. The payment would be made through the U.S. consulate nearest the employee's residence.

- o Employers would contribute into a trust fund an amount equivalent to the Social Security payroll tax applicable to employers. Such fund would be used for administering and enforcing the program.

The concerns centering on any temporary worker program are (1) allowing only the number of needed workers into the country, (2) ensuring that domestic workers are not displaced, (3) providing control of employers to assure there is no discrimination or abuse of workers, (4) providing control of employees so that they are employed and work only for eligible employers, and (5) ensure return to home country after expiration of visa.

I believe that we satisfy all of these requirements in the amendment we suggest, while also providing for the needed flexibility to assure the availability of seasonal foreign workers where needed, when needed in the production of perishable commodities. It would be a responsible program for all parties, and one that would work. It would not add to the number of seasonal agricultural workers needed from foreign countries, but would provide for our labor needs while

maintaining a necessary level of control. This balance is vital to the success of immigration reform in establishing a legal system and in eliminating the influx of illegal aliens.

Conclusion

The transition period amendment contained in both S.529 and H.R. 1510, that would allow three years for farmers to come into compliance with the Act, is not a long term solution. It simply provides a gradual schedule for compliance but ignores the basic inadequacies of the status quo -- the unavailability of sufficient domestic workers and the need for a more flexible mechanism than H-2 provides for the growing and harvesting of unpredictable perishable commodities. At the conclusion of the transition period, growers would still face these problems. Their inability to overcome them would result in either severe civil penalties, if continued resort were made to illegal workers, or unharvested crops. Neither choice is acceptable.

Absent some type of legislative accomodation of the unique needs of many agricultural employers who produce perishable commodities, there is no question that a

multi-billion dollar industry will be seriously endangered if the current Senate and House proposals are enacted in their current form. Absent an available qualified workforce, growers requiring the more flexible program will face the prospect of crops rotting in the fields and ultimate financial ruin. Most of the growers affected are not large corporate conglomerates which might be able to sustain such losses, but, instead, tend to be small growers with under a hundred acres.

In addition to the growers directly affected by this legislation, there are innumerable others who provide related services who also would be hurt. The farmworker who helped cultivate and harvest these crops would be deprived of jobs. Distribution and transportation workers would be hurt because there would be fewer commodities to distribute. Grocers and merchants would not have quality produce to sell, and restaurants would not have fresh fruits and vegetables to serve to their customers. Finally, the American consumer would either be deprived of some of this nation's most valued food products, or pay substantially increased prices for those that are available.

We appreciate the opportunity to present our views and recommendations to this Committee. We ask your careful consideration of this testimony and adoption of the amendment respectfully requested. Thank you.

APPENDIX A

ANALYSIS OF FIELDWORKERS

<u>Year</u>	<u>Month</u>	<u>Number of Fieldworkers</u>	<u>Amount of Monthly Variance</u>	
			<u>Absolute</u>	<u>Percentage</u>
1982	Jan	187		
	Feb	166	(21)	(11)
	Mar	17	(149)	(96)
	Apr	199	182	1071
	May	282	83	42
	Jun	321	39	14
	Jul	361	40	12
	Aug	227	(134)	(37)
	Sep	179	(48)	(21)
	Oct	108	(71)	(40)
	Nov	168	60	56
	Dec	<u>212</u>	44	26
	Monthly Average	202		
1983	Jan	223	11	5
	Feb	145	(78)	35
	Mar	38	(107)	(74)
	Apr	341	303	797
	May	369	28	8

REPRESENTATIVE CASE STUDY ILLUSTRATING THE INADEQUACIES OF THE
H-2 PROGRAM TO MEET THE NEEDS OF THE GROWERS OF PERISHABLE COMMODITIES

1981 Springcrest Peach Harvest
Tulare County, California

INTRODUCTION: The following information explains the current and proposed H-2 program requirements and applies them to the true facts of a California peach harvest in 1981 to illustrate why the H-2 program is incapable of responding to the needs of the producers of perishable crops. Although this is one example, it is not unique and demonstrates the problems growers encounter on a periodic basis. The following example is based upon the grower's anticipation that the peaches will be ready for harvest on May 30, 1981.

APPLICABLE TIME PERIOD

Current H-2: 80 days
(20 C.F.R. §655.200)

(H.R. 1510, §211) 50 days

Senate Amendments: Up to
(S-529, §211) 80 days

REQUIRED ACTION BY GOVERNMENT UNDER H-2

Petition must be filed 80 days in advance of need with State Employment Service (SES), placing order no later than February 9 (or April 10 under a 50 day requirement) for peach harvest anticipated to begin on May 30, 1981. The petition includes the following forms:

1. Form 7-50B requires job description, information about employer, previous certifications, union information, hours offered, pay and benefit information, etc.
2. Form MA 7-90 clears employer's order for an intra and interstate search for domestic workers.
3. Form ES 338 requires a description of the housing that must be provided workers with subsequent inspections by DOL and/or state agencies to assure Federal and State health and safety laws are met.
4. ES 338A is a supplement to ES 338 that details the safety and health aspects of the housing. An employer may be questioned or required to complete the following:
5. DE 638T outlines employment practices of petitioner and the actual job skill requirements sought for job to be filled.

APPLICATION OF H-2 REQUIREMENTS TO 1981 PEACH HARVEST

Under both an 80 and 50 day advance petitioning requirement, a grower of 60 acres of Springcrest peaches would anticipate, based on past experience with the harvest date of the crop and manpower utilization, that the peaches will be ready for harvest on May 30 and that 8 crews consisting of 18 persons, each will be needed. Although the grower would know a little more about the crop at 50, as compared with 80 days, the 30 day difference would not affect his conclusion concerning the May 30 harvest date.

APPLICABLE TIME PERIODREQUIRED ACTION BY GOVERNMENT UNDER H-2

6. DE 8273 outlines the minimum contract to be entered between employer and prospective employees. Once an H-2 program is undertaken, a contract must be offered to all recruited workers detailing duties, hours, wages and benefits, money advanced and length of contracts.

APPLICATION OF H-2 REQUIREMENTS TO 1981 PEACH HARVEST

Current H-2 (20 C.F.R. \$655.200)	Shortly after application is filed	Current regulations and proposed amendments require that the employer be notified within a short period of time whether the petition meets the preliminary eligibility requirements for H-2 participation. In actual practice, notification takes weeks, or even months to receive. Assuming that notice of approval was given within 7 days of the application period, a grower of peaches would know 73 to 43 days in advance of the anticipated peach harvest date and would not change the projected harvest date of May 30 or the need for 8 crews of 18 persons each for a period of 10 days. His obligation to recruit would begin at this time. If the petition were denied, the employer could seek judicial review. This could delay entry of H-2 workers until after May 30.
House Amendment (H.R. 1510, §211)	Within 7 days of the filing of the H-2 application	Current regulations and proposed amendments require that the employer be notified within a short period of time whether the petition meets the preliminary eligibility requirements for H-2 participation. In actual practice, notification takes weeks, or even months to receive. Assuming that notice of approval was given within 7 days of the application period, a grower of peaches would know 73 to 43 days in advance of the anticipated peach harvest date and would not change the projected harvest date of May 30 or the need for 8 crews of 18 persons each for a period of 10 days. His obligation to recruit would begin at this time. If the petition were denied, the employer could seek judicial review. This could delay entry of H-2 workers until after May 30.
Senate Amendment (S.529, §211)	Within 7 days of the filing of the H-2 Application	Current regulations and proposed amendments require that the employer be notified within a short period of time whether the petition meets the preliminary eligibility requirements for H-2 participation. In actual practice, notification takes weeks, or even months to receive. Assuming that notice of approval was given within 7 days of the application period, a grower of peaches would know 73 to 43 days in advance of the anticipated peach harvest date and would not change the projected harvest date of May 30 or the need for 8 crews of 18 persons each for a period of 10 days. His obligation to recruit would begin at this time. If the petition were denied, the employer could seek judicial review. This could delay entry of H-2 workers until after May 30.
Current H-2: (20 C.F.R. \$655.206)	20 days before date of need for workers or after 60 days of the recruitment period, whichever is later	On May 10, or 20 days in advance of the projected date of May 30, at which time it is expected that the workers will be needed to harvest the ripened peaches, the grower will have additional information concerning the date on which picking should begin. This information, which includes climatic and cultural conditions at the time, suggests that the crop may be ready for picking 5 days later than May 30, but is not reliable enough to cause the grower to change the initial work order for 8 crews of 18 persons each.
House Amendment (H.R. 1510, §211)	Same	On May 10, or 20 days in advance of the projected date of May 30, at which time it is expected that the workers will be needed to harvest the ripened peaches, the grower will have additional information concerning the date on which picking should begin. This information, which includes climatic and cultural conditions at the time, suggests that the crop may be ready for picking 5 days later than May 30, but is not reliable enough to cause the grower to change the initial work order for 8 crews of 18 persons each.
Senate Amendment (S.529 §211)	Same	On May 10, or 20 days in advance of the projected date of May 30, at which time it is expected that the workers will be needed to harvest the ripened peaches, the grower will have additional information concerning the date on which picking should begin. This information, which includes climatic and cultural conditions at the time, suggests that the crop may be ready for picking 5 days later than May 30, but is not reliable enough to cause the grower to change the initial work order for 8 crews of 18 persons each.

APPLICABLE TIME PERIOD		REQUIRED ACTION BY GOVERNMENT UNDER H-2	APPLICATION OF H-2 REQUIREMENTS TO 1981 PEACH HARVEST
Current H-2 (20 C.F.R. §655.201(d))	20 days from the estimated date of need or after 60 days of the recruitment period, whichever is later	The employer can amend its application to increase the number of workers needed, as long as the increase does not exceed 15% of the number of workers originally sought. If an increase greater than 15% is sought, the employer bears the burden of showing the additional need could not be foreseen and that the employer would face a critical shortage of workers if required to undergo an additional recruitment period for U.S. workers.	May 10, some 20 days in advance of the anticipated date of the peach harvest, there was nothing that would indicate to the grower that additional workers were needed to supplement the 8 crews of 18 persons each.
House Amendment (H.R. 1510, §211)	Same		
Senate Amendment (S. 529, §211)	Same		
Current H-2: (20 C.F.R. §653.501(d) (2) (v))	At least 10 working days prior to original date of need (14 actual days)	An employer must notify the SES office within 10 working days of the original date of need if the date of need for the workers changes. In other words, if the grower needs the workers sooner or later because of unforeseen events affecting the date of harvest, it must notify the SES within 10 working days and ask for a new arrival date.	10 working days is in reality 14 calendar days before the peach grower's May 30 anticipated harvest date. This means the grower would have to notify the SES no later than May 16 if he intended to change the original arrival date of May 30. At this time, the grower had no information that suggested that he should change his anticipated date of need or the number of workers needed, or the time period for employment.
House Amendment (H.R. 1510)	No Comparable Provision		
Senate Amendment (S. 529)	No Comparable Provision		
2 days before the anticipated date of need		There are no provisions under current H-2 law or the proposed House and Senate amendments that give a grower the option to quickly adjust the date of arrival of the H-2 workers after the 14th day prior to the original date of need is passed.	On the morning of May 28, or 2 days before the anticipated date of the peach harvest, the grower and others examined the peach crop and still concluded that May 30 would be the date harvesting would begin. On the afternoon of May 28, the temperature rose to an unexpectedly high temperature of 102 degrees.
Current H-2:	No Provision		
House Amendment	No Provision		
Senate Amendment	No Provision		

APPLICABLE TIME PERIOD

1 day before the anticipated date
of need

Current H-2: No Provision
House Amendment No Provision
Senate Amendment No Provision

REQUIRED ACTION BY GOVERNMENT UNDER H-2

There are no provisions under current H-2 law or the proposed House and Senate amendments that give a grower the option to quickly adjust the date of arrival of the H-2 workers after the 14th day prior to the original date of need is passed.

Day of the anticipated date
of need

Current H-2: No Provision
House Amendment No Provision
Senate Amendment No Provision

There are no provisions under current H-2 law or the proposed House and Senate amendments that give a grower the option to quickly adjust the date of arrival of the H-2 workers after the 14th day prior to the original date of need is passed.

APPLICATION OF H-2 REQUIREMENTS TO 1981 PEACH HARVEST

On May 29, or 1 day before the anticipated date of harvest, rains fell and temperatures remained in the 90's. At this point, the grower was concerned that the rain and high temperatures during the past two days would ripen the crop too quickly; however, after careful evaluation by management and field supervisors, it still appeared that the May 30 date would be good and harvest would last for the normal 10 day period. However, a little uneasiness set in.

On the date of need, it became obvious that due to the weather of the two previous days, the entire peach crop was ready to be picked. The 8 crews originally contracted were less than half of what was needed to harvest the crop. Instead of having a normal period of 10 days in which to harvest the crop, the entire crop had to be picked within 3 days. As a result the grower lost 25% of his crop on May 30 and ultimately lost nearly 66% of it. He was able to pick and market the remaining peaches only because he spent 48 hours in non-stop recruitment of workers who were available in an area 40 miles north and 60 miles south of his farm. Because these workers were in the area and had the flexibility to move to his farm on short notice, he was able to double his workforce to 16 crews within 48 hours and, as a result, was able to save part of his crop. Under the H-2 program, he would not have had the flexibility to recruit these workers. Any changes in the date of arrival of workers would have to have been made 10 working days in advance. Any changes in the number of workers would have had to be made 20 days in advance, and since the grower needed 100% (as compared with 15%) more workers than anticipated, he would have to prove his need was unforeseeable and that additional recruitment would be harmful. The grower was able to salvage part of his crop only because migrant workers were in the area and were not subject to the restrictions of the H-2 program.

STATEMENT BY HENRY J. VOSS
PRESENTED TO HOUSE AGRICULTURE COMMITTEE
RE: HR 1510 IMMIGRATION REFORM AND CONTROL ACT OF 1983

JUNE 15, 1983

I'M HERE TODAY REPRESENTING THE CALIFORNIA FARM BUREAU FEDERATION, THE STATE'S LARGEST FARM ORGANIZATION AND THE FARM LABOR ALLIANCE AN AFFILIATION OF FARM EMPLOYER GROUPS FORMED RECENTLY TO REPRESENT THE WEST IN THESE IMMIGRATION PROCEEDINGS I AM A FARMER AND A FARM EMPLOYER OUR FAMILY FARM PRODUCTION CONSISTS OF PEACHES GRAPES ALMONDS, MELONS TOMATOES AND OTHER VEGETABLES; MOST REQUIRE CONSIDERABLE LABOR FOR CULTIVATION AND HARVESTING.

CALIFORNIA IS WIDELY RECOGNIZED FOR ITS ROLE IN PRODUCING FRUITS AND VEGETABLES REPRESENTING ABOUT 45 PERCENT OF THE NATION'S PRODUCTION WE'RE PROUD OF THAT ACCOMPLISHMENT BUT WHAT'S MORE SIGNIFICANT ABOUT THAT FIGURE IS OUR CRITICAL RELIANCE ON AN ADEQUATE AND TIMELY WORK FORCE TO HARVEST THESE PERISHABLE CROPS WHEN OUR CROPS TELL US THEY ARE READY, WE CAN'T WAIT AND CONSUMERS NATIONWIDE RELY ON US TO ACCOMPLISH THAT TASK.

CLEARLY THE NUMBER ONE CONCERN FACING OUR INDUSTRY TODAY IS OBTAINING A VERSION OF CURRENT IMMIGRATION REFORM LEGISLATION WHICH IS WORKABLE.

IF THERE IS ONE MESSAGE THAT I'D LIKE TO CONVEY TODAY, IT IS THAT WE ARE DEEPLY WORRIED THAT THE CURRENT PROPOSALS CONTAINED IN SECTION 101 WILL NOT MEET OUR LABOR NEEDS THE H-2 PROGRAM WHICH HAS BEEN USED ON THE EAST COAST WILL NOT WORK IN CALIFORNIA, SINCE OUR HARVEST AND EMPLOYMENT PATTERNS ARE VERY DIFFERENT.

WE RECOGNIZE THAT IT HAS BEEN A GOOD PROGRAM FOR THOSE USING IT AND WE URGE IT'S CONTINUATION FOR THOSE PURPOSES. BUT EVEN WITH THE MODIFICATIONS PROPOSED IN THE SIMPSON AND MAZZOLI BILLS WE BELIEVE THE PLAN WILL RESULT IN HARDSHIPS FOR OUR FARMERS AND FARMWORKERS ALIKE. OUR FARM PRODUCTION IS THE BEGINNING POINT FOR HUNDREDS OF THOUSANDS OF OTHER JOBS IN PACKINGHOUSES, TRANSPORTATION AND MARKETING.

UNLESS WE CAN DEVISE A FLEXIBLE SYSTEM THAT RECOGNIZES OUR CONDITIONS THE HARVESTING OF HIGHLY SEASONAL LABOR INTENSIVE CROPS IN CALIFORNIA AND THE REST OF THE NATION WILL BE JEOPARDIZED. CERTAINLY A 50 OR 80 DAY NOTIFICATION PERIOD WILL NOT WORK. WORKER CONTRACTS THAT ARE SPECIFIC TO AN EMPLOYER OR EMPLOYER GROUP AND SITE WILL NOT WORK.

MANY OF OUR CROPS HAVE A SHORT BUT HIGHLY CRITICAL HARVEST PERIOD. A CHERRY GROWER WILL OFTEN HARVEST HIS ENTIRE CROP IN A WEEK OR 10 DAYS. THE SAME IS TRUE FOR APRICOTS PEARS OLIVES AND MANY OTHER CROPS MOST OF OUR RAISIN GRAPES ARE CUT AND LAID ON TRAYS FOR DRYING DURING AN INTENSE TWO-WEEK HARVEST PERIOD IN EARLY SEPTEMBER OUR FARM LABOR FORCE DURING THE PEAK HARVEST PERIOD IS MADE UP OF TRULY MIGRATORY WORKERS WHO FOLLOW THE VARIOUS CROPS AS THEY MATURE IN ONE AREA OF THE STATE AFTER ANOTHER. TABLE GRAPES ARE NOW BEING HARVESTED IN THE DESERT REGION OF THE COACHELLA VALLEY SOON THE HARVEST WILL MOVE NORTH TO THE SAN JOAQUIN VALLEY AS THE SEASON PROGRESSES MELONS, TOMATOES, WINE GRAPES AND MANY OTHER CROPS FOLLOW THE SAME PATTERN.

WHILE THE SEQUENCE IS PREDICTABLE, THE EXACT HARVEST DATES CAN CHANGE QUICKLY. VALLEY TEMPERATURES CAN SOAR TO 110 DEGREES, SPEEDING THE HARVEST. LIKEWISE THE THREAT OF EARLY FALL RAINS PLACES A HEAVY DEMAND ON THE AVAILABLE WORK FORCE. OUR PRESENT FARM LABOR SYSTEM, DESPITE ITS MANY FLAWS, WORKS BECAUSE THE FARMWORKERS ARE FREE TO MOVE FROM ONE AREA TO ANOTHER, FROM ONE EMPLOYER TO ANOTHER. ANY WORKER SHORTAGES THAT DEVELOP ARE GENERALLY CORRECTED WITHIN A FEW DAYS TIME THE SYSTEM WORKS BECAUSE IT IS UNENCUMBERED.

IT'S OBVIOUS THEN, I THINK, WHY WE ARE TROUBLED BY THE FEATURES OF THE H-2 PROGRAM WHICH EVEN IF MODIFIED AS PROPOSED, WOULD STILL REQUIRE ADVANCE NOTIFICATION AND CERTIFICATION OF LABOR NEEDS EXHAUSTION OF ALL EFFORTS TO HIRE DOMESTIC WORKERS, AND A SPECIFIC CONTRACT BETWEEN EMPLOYER AND EMPLOYEE INCLUDING TRAVEL AND HOUSING ARRANGEMENTS THESE ARE ALL PAPERWORK AND BUREAUCRATIC PROCEDURES THAT CONSUME VALUABLE TIME. IT'S NO EXAGGERATION TO SAY THAT MOST OF US WOULD BE WAITING FOR CLEARANCE FROM WASHINGTON LONG AFTER OUR CROP HAD ROTTED IN THE FIELD.

LET ME CITE A MORE SPECIFIC EXAMPLE OF THE KIND OF PROBLEM THAT CAN OCCUR. RECENTLY A FRESNO COUNTY BOYSENBERRY GROWER STARTED HIS TWO-WEEK HARVEST BECAUSE OF A TWO-WEEK HEAT WAVE IN MAY, THE HARVEST BEGAN ON JUNE 1ST RATHER THAN THE NORMAL JUNE 10TH STARTING DATE. THERE'S NO WAY UNDER THE H-2 CONCEPT THAT THE EMPLOYER WOULD HAVE BEEN ABLE TO ADEQUATELY GAUGE AND ADJUST HIS LABOR REQUIREMENTS TO COMPENSATE FOR THAT WHIM OF NATURE. WITHOUT A READILY AVAILABLE WORK FORCE, THE CROP WOULD HAVE BEEN LOST.

A MIGRATORY FARMWORKER MAY TRAVEL THE LENGTH OF OUR STATE DURING THE COURSE OF THE HARVEST SEASON HE MAY WORK FOR 5, 10, 15 OR MORE EMPLOYERS AND WORK WITH JUST AS MANY DIFFERENT CROPS

IF YOU EXAMINE THE ELEMENTS OF OUR CURRENT SYSTEM, THE VAST NUMBER OF EMPLOYERS, A HUGE MOBILE WORK FORCE, DOZENS OF CROPS, THROUGHOUT THE STATE IN VARIOUS STAGES OF HARVEST IT'S HARD TO IMAGINE THAT WORKERS ARE AVAILABLE WHEN NEEDED. AND YET IT WORKS AND THE REASON IT WORKS IS BECAUSE OF THE FLEXIBILITY. THE OPPORTUNITY FOR AN INDIVIDUAL TO EARN \$150 A DAY PICKING CHERRIES WILL TEMPORARILY DRAW WORKERS FROM ANOTHER JOB SUCH AS WEEDING THAT LACKS THE URGENCY. THE LABOR MARKETPLACE HAS ITS OWN SUPPLY AND DEMAND FUNCTIONS.

THE MIGRANT WORKER FACES JUST AS DIFFICULT A PROBLEM. THE AVERAGE SEASONAL WORKER IS EMPLOYED 4 AND 1/3 MONTHS PER YEAR. HE DEPENDS UPON HIS MOBILITY TO SEEK OUT THE BEST AVAILABLE WORK. IF HE FAILS TO EARN ENOUGH MONEY OR DOESN'T LIKE TO WORK WITH A CERTAIN CROP OR EMPLOYER, HE'S FREE TO MOVE ON. HE MUST MAKE THE MOST OF HIS OPPORTUNITIES. HE CAN'T WAIT.

I'VE TALKED ABOUT THE PROBLEMS; NOW LET ME OFFER SOME POSSIBLE SOLUTIONS. WE'RE NOT ASKING FOR THE ABOLITION OF THE H-2 PROGRAM. INSTEAD WE'RE REQUESTING AN AMENDMENT TO H.R. 1510 THAT WOULD PROVIDE FOR A STRICTLY CONTROLLED NON-IMMIGRANT SEASONAL FOREIGN WORKER PROGRAM WHICH WOULD SUPPLEMENT THE H-2 PROGRAM.

ADMITTANCE OF SEASONAL WORKERS WOULD BE SUBJECT TO THE APPROVAL AND CONTROL BY THE U.S. ATTORNEY GENERAL WITH A GUARANTEE THAT THEY WOULD RETURN TO THEIR HOME LANDS AFTER A LIMITED STAY IN THIS COUNTRY. BUT, UNLIKE THE CURRENT H-2 PROGRAM, SUCH WORKERS WOULD BE FREE TO MIGRATE FROM EMPLOYER TO EMPLOYER IN RESPONSE TO EVER-CHANGING HARVEST NEEDS.

IN SHORT, WE ARE SEEKING FLEXIBILITY NOT CONTAINED IN THE CURRENT LEGISLATION. WE CAN'T LIVE WITH THE CURRENT NOTIFICATION REQUIREMENT, AND WE KNOW FROM EXPERIENCE THAT WE CANNOT RELY ON LOCAL EMPLOYMENT DEVELOPMENT OFFICES TO SUPPLY DOMESTIC WORKERS. WE KNOW TOO, THAT GOVERNMENT EMPLOYMENT OFFICES HAVE JUST AS MUCH DIFFICULTY DETERMINING THE LEGAL STATUS OF WORKERS AS WE DO. FOR THESE REASONS WE'RE CONCERNED WITH PENALTIES THAT WILL BE IMPOSED UPON EMPLOYERS.

WE ARE ALL IN AGREEMENT THAT STEPS MUST BE TAKEN TO DEAL WITH THE IMMIGRATION PROBLEM. BUT LET'S GO ABOUT IT CORRECTLY. FOR MOST CALIFORNIA FARMERS, IT MAY BE A QUESTION OF SURVIVAL. WE SEEK YOUR HELP TOWARD DEVELOPING A WORKABLE PROGRAM WHICH WILL ADEQUATELY PROVIDE FOR OUR LABOR NEEDS.

**Mexican American
Legal Defense
and Educational Fund**

1701 18th Street, N.W.
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MALDEF

TESTIMONY

**ANTONIA HERNANDEZ, ASSOCIATE COUNSEL
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND**

**Before the
COMMITTEE ON AGRICULTURE
U.S. HOUSE OF REPRESENTATIVES**

**IN RE H.R. 1510
"THE IMMIGRATION REFORM AND CONTROL ACT OF 1983"**

**Washington, D. C.
June 15, 1983**

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Mr. Chairman, my name is Antonia Hernandez. I am Associate Counsel for the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to preserving the civil and constitutional rights of persons of Mexican and Hispanic descent. We currently have offices in San Francisco, Los Angeles, Denver, San Antonio, Chicago and here in Washington, D. C.

In recent years, issues concerning U.S. immigration policy and immigrants' rights have become increasingly important to MALDEF because of their significant impact on our Hispanic communities.

I. EMPLOYER SANCTIONS

Our position on employer sanctions is well known. We are opposed to any legislation that contains an employer sanctions provision. Our principal objections are based upon the belief that such sanctions are ineffective, unworkable, expensive and, most importantly, they are discriminatory. We have previously outlined these concerns. Today, I wish to focus the discussion on the discriminatory aspects of the employer sanctions provisions.

MALDEF's position can be summarized as follows: employer sanctions will have a discriminatory impact on Hispanic and other foreign-looking individuals whose physical and/or linguistic characteristics are associated with undocumented migrants. Given the nature of this discrimination, existing anti-discrimination law, especially Title VII, will not adequately protect or remedy discrimination against Hispanics. Finally, plans to institute a more "verifiable" identification system will exacerbate, not alleviate, discrimination.

A. DISCRIMINATORY IMPACT

It is MALDEF's considered opinion that employer sanctions will have a discriminatory impact upon Hispanics and other foreign-looking individuals.

The essence of the employer sanction provisions make it illegal for all employers to knowingly hire aliens who are unauthorized to work in the United States.^{1/} Violations are punishable by civil, and, in some instances, criminal penalties.^{2/} All employers are covered by this legislation (although employers with three or less employees are exempt from the record-keeping requirements). In addition, employers must verify that they have examined a new worker's identification. The proposal relies upon existing forms of identification for the first three years, including a U.S. passport, social security card, birth certificate, driver's license, etc. The bill provides an affirmative defense for employers who show good faith compliance with the record-keeping requirements when they examine documentation to see if it "reasonably appears on its face to be genuine."

This legislation raises two problems. First, it creates a "suspect" class of person, Hispanics and foreign-looking persons. Secondly, it imposes on employers the law enforcement function of evaluating the authenticity of documentation, inspite of the fact that many employers have little or no knowledge of the complexities of immigration law. As a result, employers will closely scrutinize documents belonging to Hispanics so as not to hire unauthorized persons. Employers will also have the incentive to stop hiring Hispanics altogether, in order to avoid paperwork, disruptions of operations, and penalties. While there is a good faith defense

available to those employers who do check documents, err and hire undocumented aliens, the tendency will be for employers to take steps to avoid the potential of violating the law. Employers will take every precaution to prevent hiring undocumented aliens, even if it means not hiring Hispanics who may be authorized to work.

Such results are evident in the recent INS operations to discourage employers from hiring undocumented aliens. The discriminatory impact of such operations are described below.

1. Anti-Alien Sentiments, Creating a Suspect Class

The problem of illegal immigration is perceived as one identified with all Mexican, Central American or Caribbean (predominately Cuban-Haitian) immigrants. These aliens are perceived to take jobs away from U.S. citizens, avail themselves of public services and otherwise drain the U.S. economy. In many communities no distinction is made between the legal and illegal immigrants from these groups since both legal and illegal immigrants share similar appearances, culture, language and other characteristics.^{3/}

Therefore, it is not uncommon for communities where legal immigrants have settled from developing countries, for residents to "routinely comment upon the country's illegal immigrant problems by reference to this entire new immigrant population."^{4/}

Employer sanctions reaffirm and encourage this anti-alien sentiment. Employer sanctions impose penalties upon employers who hire unauthorized persons and since illegal immigration is associated with Hispanic and Caribbean persons, persons with those characteristics will be subjected to intense scrutiny. The proposed legislation does require employers to check the legal status of all employees, irrespective of appearance. However, while non-Hispanics must be checked for legal

documentation, it is the identification of the Hispanic population that will be thoroughly inspected, since it is they who will be suspected of being undocumented.

2. Recent INS Operations to Discourage Hiring Undocumented Aliens

The discriminatory impact of programs similar to the employer sanctions provisions of the immigration bill have already been felt in many communities. Recent INS efforts to discourage the hiring of undocumented aliens give an indication of the discriminatory impact sanctions are likely to have on the undocumented Hispanic communities.

The INS conducted "Operation Jobs" during the last week of April 1982. This operation consisted of a series of intensive factory raids conducted in nine major cities. The goal was to find and repatriate undocumented aliens working in jobs that citizens and legal resident aliens would find desirable. The raids caused quite an uproar in the communities in which they were conducted. In addition, the methods used were similar to those subsequently held to be unconstitutional in International Ladies Garment Workers Union v. Sureck.^{5/} As a result, the INS discontinued the project.

In the wake of Operation Jobs and ILGWU v. Sureck, the INS started a project to dissuade employers from hiring undocumented aliens. The project, "Operation Cooperation," was designed to enlist the cooperation of employers in aiding the INS to identify undocumented aliens and persuading employers to discharge such employees.^{6/}

The INS sought to get the employers to consent to a survey of employees. INS agents were sent to talk with personnel management, requesting either access to personnel files, or access to the plant (to interview employees). Alternatively, the INS would seek to disseminate questionnaires to employees. Employers were asked to distribute the

questionnaires, which had nothing to indicate that they were from the INS. If an employer refused to consent to a survey of employees, the INS would seek to obtain sufficient probable cause to support the issuance of a search warrant by a federal magistrate. Once the survey was undertaken, whether by consent or search warrant, the names of undocumented aliens would be mailed to employers. INS requested employers to employ only those persons in the U.S. legally. INS would offer assistance in helping employers to determine workers' documented status.^{7/}

3. Discriminatory Impact of These Operations

Operation Jobs caused a great deal of anxiety among the employers who were raided and among those employers who feared similar raids. As a result, many employers requested employees to produce evidence of citizenship or legal residence. Those employees who could not produce such evidence to the satisfaction of the employer were either terminated or their names were forwarded to the INS for a status check.^{8/} Such a process resulted in much confusion and discrimination. Employers, with little or no understanding of immigration law, or familiarity with the documents which indicate legal status, were unable to properly identify the documents which proved their employees were entitled to work. As a result many individuals who were entitled to work were fired. The heaviest burden fell upon legal resident aliens and "documentable" aliens.

a. Permanent Resident Aliens.

Many problems occurred because employers could not identify the documents which indicate an alien is entitled to be in this country and allowed to work.

Permanent resident aliens, for example, are issued a "green" card as proof of lawful immigration to this country. The name comes from the fact that many years ago the resident alien card was green. The color has now been changed. It was first pink, then blue, now white. This may seem like an insignificant detail, but many employers have refused to accept a white "green" card as proof of legal immigration status. Thus, legal resident aliens have had to engage attorneys to explain to employers that, in fact, they were authorized to work.^{9/}

Another problem arose where INS records were not up to date. Shortly after a southern California firm was raided during Operation Jobs, the company decided to cooperate with the INS. The Company sought to identify undocumented employees. This would ensure a documented work force, and would avoid problems with the INS in the future. The INS raids were very disruptive because the raid itself halted production, and the company had to replace many undocumented workers who were arrested. The INS advised the employer to inspect all green cards. The company was especially cautioned to treat all green cards in the "A-40" series as highly suspect. It was explained that these cards were extremely old, the green card was said to have been issued to temporary immigrants or to persons who had since been deported. The company went through its files and pulled some 12 to 15 persons with A-40 series cards. The company asked these employees to submit additional documentation of legal residence.

A list of these persons were also turned over to the INS for further investigation. Upon receipt of the employees' names, the INS called their computer center to check on the legal status of the employees. However, the A-40 cards are an old series and as a result the computer records. This caused much delay and anxiety

to the employees. The employees were all legitimate permanent residents. They were also long time employees of the company. The employees were quite upset and the firm was very embarrassed.^{10/} However, the point of this example is that the computerization of records is not uniform. The data stored tends to be the most recent records.

Nor is the problem limited to the records of legal resident aliens. Not all naturalized citizen information is computerized. The San Francisco U.S. Attorney's office was asked to investigate charges that undocumented aliens had requested and received bilingual ballots and were actually voting. The U.S. Attorney got a list of the voters who requested bilingual ballots and turned them over to the INS for a legal status check. Some of these persons were challenged as not being citizens, but were in fact naturalized citizens whose records had not yet been computerized.^{11/}

Of course, it will be argued by some that such persons were subsequently able to present documentation of their legal status. However, the fact that the legality of their stay in the United States was called into question and never cleared by the INS authorities raises some important questions. First, in a tight economic period where there are limited job opportunities, a delay in establishing documented status, such as those described above, can be quite costly. A job opportunity once lost, may be difficult, if not impossible, to regain. Furthermore, it places a heavy burden upon the employer who must evaluate the proffered documentation of employees (or prospective employees) without the benefit of any training in the field of immigration. It also places a heavy burden upon the documented employee to prove documentation when his papers are not accepted because of an employer's unfamiliarity

with immigration documents, or in the INS's administrative errors.

b. Documentable Aliens

There are many aliens who are residing in this country who are technically undocumented, but have a legitimate claim to legalized status. Many such persons have applied (or are eligible to apply) for permanent resident status. This can be done through a number of ways, including an immediate documented relative or suspension of deportation. However, due to the INS administrative backlogs, there exist extremely long waiting periods before a person can be issued a green card. For example, a person applying for legal status through a citizen brother or sister must wait four and a half years for the application to be processed. A person applying through a permanent resident spouse must wait ten years.^{12/}

A good example concerns a 21-year old undocumented alien who married an Hispanic permanent resident. He applied for legal residence through his spouse. However, there is a ten-year wait to process the application. His wife has filed a petition to naturalize. In Los Angeles it will take three years to process her application for citizenship.^{13/} He is certainly entitled to immigrate, however, it will take a minimum of three years before he can get his green card. In the meantime, he lost his job because he is not documented. Under immigration regulations he can file for a work permit but even this will take six months for an INS decision.^{14/}

Another related problem is that employers fail to recognize legitimate documentation which authorize aliens to work because of employer unfamiliarity with immigration law. The Simpson-Mazzoli bill lists several pieces of identification which entitle an alien to work, including a U.S. passport, a social security card, a driver's license, birth certificate, etc. One item not mentioned is an I-94

card. The I-94 card is a simple slip of paper which shows that the individual is on the INS docket control. Once a person has applied for legal entry and is in the waiting period, the alien may apply for work authorization. When the aliens' request is approved, the INS will simply stamp the I-94 card (the length of the authorized period may be indefinite or for a specified period of time). This, too, is a valid permit. However, some employers fail to recognize such a permit.

For example, a Chicago firm that had been hit by the raids during Operation Jobs, was convinced by the INS to ask all employees for documentation. Employees were asked to provide proof of documented status. One woman was not documented but had resided in the U.S. for about nine years. Under immigration law such a person can be eligible for "suspension of deportation," (a defense to deportation). A hearing is granted if the alien can show (1) seven years of continuous residence and (2) extreme hardship. Since the woman was eligible, she was given an I-94 card showing she was on docket control and given authorization to work. However, the employer refused to accept this documentation. He wanted to see a green card.^{15/} While some employers accept this document as a valid indication of the eligibility to work, other employers do not.

Another problem posed by the use of employer sanctions is an exposure of both documented and undocumented aliens to exploitation by persons who offer to aid them without any real knowledge of what is necessary. Another firm in Chicago raided by the INS put up a notice in June 1982 warning its workers about the need to adjust their immigration status. It told workers that they must have their

immigration status adjusted by no later than August 1 of 1982. The firm also included the names of three law firms, including MALDEF's Chicago office (MALDEF was never notified that such an announcement was being made. We were struck by the numbers of persons calling, the fear and urgency (and near panic) of these persons asking for help. Moreover, the persons asking for help were willing to pay any price to have their status adjusted. The problem is that many are prey to those who, with little knowledge of immigration law or procedures would offer their services in exchange for exorbitant sums of money. The potential for exploitation is obvious.

These illustrations indicate a number of problems with the employer sanctions provisions. First, they confirm the fears that it is the Hispanic workforce that will be singled out for particularly close inspection of their documentation. Secondly, employers are being forced to undertake many of the law enforcement duties of the INS. Not only are such requirements disruptive of business operations but because of varying degrees of experience with immigration law and procedure, employers are making a number of errors which are depriving resident aliens and other eligible aliens of their jobs. Finally, the confusion and complexity of the law gives employers who do wish to intentionally discriminate an opportunity to do so.

B. REMEDIES FOR DISCRIMINATION

The House scheme for remedying the discriminatory aspects of the employer sanction provisions of H.R. 1510 is to monitor and investigate discrimination claims and allow employees to seek remedial relief through existing anti-discrimination laws.

The President is directed to monitor and consult with the Congress every six months. The U.S. Civil Rights Commission is also directed to monitor and investigate complaints of discrimination.

The House also establishes a task force consisting of the Attorney General, the Secretary of Labor and the Equal Employment Opportunity Commission (EEOC). This task force is to monitor and review allegations of discrimination.^{16/} However, Congress does not provide any enforcement mechanisms to remedy discrimination where it is found.

The current immigration proposal relies upon existing anti-discrimination laws, particularly Title VII,^{17/} to protect Hispanics and others from the discriminatory aspects of the sanctions provisions. However, Title VII has never provided the broad protections against employment discrimination. In addition, Title VII enforcement has been ineffective in protecting the interests of Hispanic workers. Finally, given the nature of the discrimination likely to result from employer sanctions, it is unlikely that Title VII will protect or remedy the discriminatory aspects of the employer sanctions provisions.

1. Title VII Provisions Inadequate to protect Hispanic Workers.

Title VII's protections against discrimination are diluted because the act exempts certain employers and employment practices from the provisions of the act. In addition, the standards of proof make it difficult to remedy the kinds of discrimination likely to occur as a result of the employer sanctions.

a. Employer exemptions.

Title VII exempts from coverage both small and seasonal employers. Employers with less than 15 employees are specifically exempted from the provisions of the act.^{18/} In addition, Title VII

provides that an employer must employ 15 or more employees during 20 or more calendar weeks in each year to be covered by the act.^{19/} This is especially crucial to Hispanic employees since we tend to be concentrated in industries that are small or seasonal in nature.

b. Employment practices.

Title VII also exempts many employment practices that have a discriminatory impact upon Hispanics. Title VII has been construed to allow the use of practices which have a discriminatory effect so long as the practice has a relationship to job performance or is supported by a business necessity.^{20/} Thus, the Supreme Court has found discrimination based on alienage i.e., requiring employees to be citizens, does not violate Title VII.^{21/} Federal Courts have also held that employer rules requiring employees to speak English on the job is lawful.^{22/} These exemptions have a severe disproportionate impact upon Hispanic workers.

c. Standards of Proof.

Finally the protection of Hispanic who are able to file claims are limited given the standards of proof necessary to prove a disparate impact case. A plaintiff must prove that the discrimination against them was intentional.^{23/} Plaintiffs have the burden of establishing a prima facie case of discrimination.^{24/} Such a prima facie case can be rebutted if an employer articulates --not proves--any "legitimate" reason for the discriminatory treatment.^{25/} Under such a standard of proof, it is difficult to prove a case of discrimination.

The burden is made even harder when considering the kinds of discriminatory problems likely to result. As indicated in the analysis above, discrimination is likely to be the result of employers identifying

a group of Hispanics as those persons likely to be undocumented aliens. Persons fired, not hired or otherwise singled out for disparate treatment will have a difficult time proving a case of discrimination since an employer will have several defenses. First, the disparate treatment can be said to be necessary in order to identify undocumented aliens so employers can comply with the law prohibiting the hiring of such aliens. Furthermore, if an employer fires (or doesn't hire) Hispanics, his "legitimate" reason may be that he could not identify the documents proffered by the alien as genuine.

The problem is that many employers will be able to honestly assert that, given the complexity of the immigration laws and the employer's lack of knowledge of procedures, they did not intentionally discriminate against aliens. More problematic, is the fact that many employers who would intentionally discriminate against Hispanics will also be able to use these arguments to effectively cover their discriminatory intentions.

2. Lack of Effective EEOC Administrative Enforcement on behalf of Hispanics

The lack of meaningful protection against employment discrimination is aggravated by the fact that Title VII has not been effectively enforced by the EEOC on behalf of Hispanics.

a. EEOC Administration.

The EEOC has never been granted the power to issue cease and desist orders. Instead, Congress has directed the EEOC to administratively eliminate unlawful discrimination through "informal methods of conference, conciliation and persuasion."^{26/} Thus, the EEOC first seeks to mediate a negotiated settlement between the opposing parties.

It is estimated that only about 4.9% of all EEOC charges in 1982 were on behalf of Hispanics alleging national origin discrimination (about 4330 charges). It was further estimated that EEOC administrative recoveries on behalf of Hispanics amounted to only 1.19% in the same year.^{29/} These figures indicate that EEOC has not been an effective means of protecting or remedying discrimination on behalf of Hispanics.

b. EEOC Litigation.

The EEOC is authorized to file civil actions against employers who discriminate but the cases actually filed are very few. Litigation for the years 1980, 1981 and 1982 amounted to 935 cases. Of these only 27 were national origin claims for Hispanics, i.e., only 2.9% of all litigation. As of April 6, 1983, the General Counsel's office had 536 cases. Approximately 44% were sex discrimination, 20% were age discrimination, 24% were race discrimination and only 2.4% were national origin, Hispanic.^{28/}

These figures indicate that the EEOC enforcement mechanism have not been very effective in protecting Hispanics from discrimination. Thus, Hispanics have been forced to seek private counsel to press their claims. However, given the relative lower incomes of Hispanics, the high cost of legal services and the difficulty of proving a discrimination case, it is not hard to see why Title VII is not seen as a very effective method for protecting the Hispanic community from the discriminatory aspects of the employer sanctions provisions.

3. Hawkins/Hart-Levin Amendments

In order to give viable protections to persons discriminated by the employers efforts to comply with the employer sanctions provisions of the immigration bill, it is necessary to include a remedial scheme

within the current legislation. Such a scheme was introduced last year during floor debate by Rep. Hawkins, Chairman of the House Subcommittee on Employment. The Senate also introduced the amendment this year as the Hart-Levin amendment.^{29/}

The Hart-Levin amendment allows an applicant or employee who feels discriminated as a result of employer sanctions legislation to file a charge with the special counsel of the U.S. Immigration Board (U.S.I.B.). The special counsel would have thirty days to investigate the claim and issue a complaint. If no complaint was made, the employee could make the complaint directly to the Board. (to be done within six months of the date of the incident.) The board, through and Administrative Law Judge (ALJ) would conduct a hearing after proper notice and service to the defendant employer. Both the employer and the employee would be full parties to the hearing and would be able to present and rebut evidence.

If on the preponderance of the evidence, the ALJ found the employer engaged in an unfair immigration related employment practice, the ALJ would have the power to: (1) issue cease and desist orders, (2) require the employer to keep records of all job applicants for a period of six months. If the practice was intentional the ALJ could order relief in the form of rehiring the employee, with or without backpay, or issue civil penalties per violation (with stiffer penalties for pattern and practice violations).

The advantage of these kind of proceedings is that they are more expedient and specifically address employer sanction type discrimination. In addition, they may be less costly to both the employee and employer.

III. LEGALIZATION

A. INTRODUCTION

The House Judiciary Committee has recognized that a large number of undocumented aliens live and work in the United States. These individuals contribute to the social and economic well being of their communities through their labor, payment of taxes, purchases of goods and services and contributions to the cultural diversity of their communities. Nevertheless, as a result of their undocumented status, the undocumented population has become a sub-class, without legal rights, subject to exploitation by employers, landlords and other unscrupulous members of the communities in which they live. In many instances, they can not collect benefits to which they have made contributions or payments such as unemployment insurance, social security, etc.

The legalization program is intended to bring the undocumented alien population "out of the shadows." The program should be designed to give aliens a legitimate place in their communities, along with all the necessary legal rights, protections and responsibilities. Thus, the goal of the legalization program can be said to be to identify, register and document as many undocumented aliens so that immigration reform can get a fresh new start.

In order for the legalization program to be successful, it must fulfill three elements. It must encompass as many aliens as possible within the program. In addition, the qualifications must be clear, concise and unambiguous. It must be clear to the undocumented alien who will be eligible and what is required of persons seeking legal status. Unnecessary and punitive restrictions in the program will make it difficult for aliens to determine whether they fall

within the eligible group. Similarly, the more discretion is given to INS officials the more uncertainty aliens face in determining whether they meet the minimum eligibility requirements. The more ambiguous the requirements, the riskier it is to come forward and participate in the program.

It is also important that the offer to legalize be genuine and not a pretext for massive deportations or repatriation. Thus, legalization must not be tied to enforcement. Aliens will not seek legalized status if it means risking deportation. This is especially true if the qualifications for the program are ambiguous or uncertain. If persons thinking they are qualified for legalized status come forward and apply but are rejected and deported, the rest of the undocumented community will not risk participation in such a program.

B. DISTRUST OF INS

There are many reasons why undocumented aliens would not avail themselves of the legalization program. Undocumented aliens have entered this country surreptitiously; hence, they live outside the formal legal system. As a result they are mistrustful of the governmental agencies, especially the INS. In addition the Hispanic community still remembers recent deportation efforts.

Legalization is a better alternative to the mass deportations that took place during the 30's and fifties and more recently (April, 1982) during Operation Jobs.

Massive deportations have occurred during times of economic hardship, in situations where people have been eager to find scapegoats for much larger economic problems. These efforts have been costly and disruptive, not only to undocumented aliens, but to citizens

and legal residents, who were at times mistakenly deported along with aliens. In addition, such tactics are deeply offensive to the principles of a free society.

Operation Jobs, the most recent largescale INS deportation effort, was extremely costly and ineffective, both financially and in terms of INS resources devoted to the operation. The operation cost approximately one million dollars, was planned for two to three months and involved temporary transferring of border patrol agents from the border to the interior. However, the program was a failure. It did not free jobs for Americans. This huge expenditure of funds resulted in the arrest of 5,000 aliens according to news media accounts. Americans did not want these jobs and within a short period about 8 percent of the undocumented aliens returned.³⁰

Moreover, the aliens have a basic mistrust of the INS. The INS's mishandling of the "Silva letter holders" is an excellent example of why many undocumented aliens will be cynical and skeptical about any legalization efforts conducted by the INS.

In the early 50's the INS erroneously allocated 250,000 Western Hemisphere visas to Cuban refugees. In 1977, a class of western Hemisphere nationals who were eligible for a visa but faced lengthy delays due to the misallocation challenged INS actions in the Courts. Silva v. Bell, 607 F2d 978 (7th Cir. 1979). The Court ordered the INS to recapture the visa numbers and to make them available to the Western Hemisphere nationals who were residing in the U.S. so they could adjust their status. Despite the court order, administrative mismanagement and consular backlogs have delayed the processing of applicants. As a result some 100,000 to 150,000 persons eligible for immigration were never processed and now faced deportation.

Both the massive deportations and the Silva experience

have seriously reduced the credibility of the federal government to effectively implement any legalization program.

C. THE LEGALIZATION PROGRAM

The legalization program, as voted out of the House Judiciary Committee, provides a cut-off date of January 1, 1982. Undocumented aliens who can establish that they have been continuously residing in the U.S. since January 1, 1982 are eligible to apply for legalization.^{31/} As mentioned, supra, it is important to provide for a recent cut-off date.^{32/} The more recent the date the more aliens will be included in the program so the risk of ineligibility is reduced. Thus, more undocumented aliens are likely to come forward and take advantage of the program. The House cut-off date is good; however, a preferable date would be December 31, 1982.

Irrespective of the date selected, two kinds of problems could seriously impair the success of the legalization effort. The first set of problems concern the definition of "continuous residence," and how such residency can be established. The second problem is to what extent existing grounds for exclusion will be used to reduce the number of persons eligible for legalization.

1. Continuous Residency

The current legislation makes eligibility contingent upon an alien's continuous residency in the U.S. since the effective cut-off date. However, clarification of the meaning of continuous residency is necessary. In particular, any definition should include flexibility in determining short temporary visits out of the U.S., seasonal residents, and voluntary departures. In addition, provisions should be made to clarify and expand the means by which aliens can prove continuous residence in the U.S.

Defining Continuous Residence

There are many undocumented aliens who permanently reside in the U.S. throughout the year. Many have been in the U.S. for the required time period. However, many leave the country for short visits (sometime beyond thirty days). These visits are usually for the holidays, weddings, funerals, etc. It is important that aliens not be penalized for such temporary visits.

Amendments similar to those offered by Senator Cranston, and adopted by the Senate, would be appropriate. One amendment provided that an alien could still be considered to have been continuously resided in the U.S. if the alien had not left the country for more than thirty days in any given year.^{33/} The second amendment allows the Attorney General to waive this thirty day limit and consider extenuating circumstances in deciding whether or not to waive the period.^{34/} This provides a means for dealing with the special problems which might prevent an alien from returning to the U.S. within the thirty day period. For example, where a person visits relatives in Mexico, and encounters some emergency (an accident, illness, etc.) or tragedy (death in the family) which prevents his return to the U.S. within the prescribed period.

The definition of continuous residence should also take into account seasonal work. Some undocumented aliens will work in the U.S. for nine to ten months out of the year and return to Mexico for the off season. In addition, some workers have been with the same employer for five to ten years. Such individuals should be included within the definition of continuous residence since their employment is stable and their contribution to an economy substantial.

Continuous residence should also make some provision for dealing with voluntary departures. When an alien is apprehended, he may be allowed to voluntarily depart the U.S. In many instances, aliens do so without the benefit of advice of counsel or without the knowledge of alternative legal remedies or defenses or the consequences of such a choice. Many aliens may have families, homes, jobs in the U.S. Current law supports the view that a voluntary departure should not break the continuity of residence. See, e.g., Matter of Young, 11 I&A 38 (1965); Matter of Benitez-Saenz, 12 I&A 593 (1967); Matter of Contreras-Sotelo, 12 I&N 596 (1967) (holding that under registry provisions voluntary departure, assuming no outstanding exclusion or deportation orders, will not by itself interrupt continuous residency). Contra, Barragan-Sanchez v. Rosenberg, 471 F.2d 758 (9th Circ. 1972) (In suspension of deportation hearings, continuous physical presence is terminated by a departure pursuant to an order granting voluntary departure).

Voluntary departures should not break continuous residence especially where the alien has reentered the U.S. within thirty days. It is the goal of the legalization program to allow aliens who can show they live, work and are an integral part of the community to adjust their legal status. Thus, where the alien can show residence for the required period, he should be allowed to adjust status, even if his stay was temporarily interrupted by a voluntary departure.

b. Proving Continuous Residence

Proof of continuous residency is complicated by the fact that documentation of continuous residence may be hard to produce. The problem is that many undocumented aliens live in an underground economy. Undocumented aliens make every effort to minimize the

the "paper trail" left by their transactions. Thus, aliens tend to pay for purchases in cash and the use of pseudonyms, aliases and false identifications.

In this case, an amendment similar to one adopted in the Senate is advisable. An alien would set a rebuttable presumption of physical presence in the U.S. if he obtained an affidavit or declaration from an employer who is a U.S. citizen, stating the alien has been in his employment for a specified period of time and, based upon personal knowledge, knows the alien has resided in the U.S. for the specific time period.^{35/}

However, the use of affidavits should be further expanded. The affidavits of other U.S. citizens, such as clergymen or landlords, should also be admissible where such persons have personal knowledge of an undocumented alien's continuous residence. They should be admissible to reconcile the alien's true name with the names used in employment or contained in employment records. This is necessary since in some employment situations an alien may work for a number of consecutive employers, each on a seasonal basis. In other instances, employers may have failed to report federal or state withholding taxes for undocumented aliens. Such employers are not likely to provide employees with proof of prior employment.

Finally, the following documents should also be acceptable as proof of continuous residence: rent receipts, utility bills, postmarked envelopes with the applicant's name and address, etc. However, the applicant should not be required to produce evidence of physical presence for each month of each year of residence. The standard under the registry should be sufficient so that continuous residence can be satisfied simply through tax records.

MALDEF recognized that many of these issues can be cleared up by regulations in the implementation phase of the legalization program. However, we feel it is important that the eligibility requirements be defined as clearly as possible so that aliens will be better able to assess their own eligibility. Equally important, INS should clearly understand Congress' wishes and incorporate them into their guidelines and in the implementation process.

2. Defining the Grounds for Exclusion

One of the most difficult aspects of legalization is how various grounds for exclusion will be interpreted. The current legislation leaves many ambiguities which make it difficult for undocumented aliens to determine whether they are eligible or not. If, in addition to the existing ambiguities, the INS ties enforcement with legalization, the result will be that aliens will not risk deportation to obtain an uncertain adjustment of status.

The House Judiciary Report indicates that "applicants for legalization are subject to most of the 33 grounds of exclusion in the current law."^{36/} The "minor paperwork" exclusions are automatically waived.^{37/} Exclusions based upon serious violations of law or related grounds may not be waived.^{38/} The remaining grounds of exclusion may be waived by the Attorney General for "humanitarian purposes to assure family reunification or when it is in the public interest."^{39/} Finally, the Judiciary Committee indicates that it expects the Attorney General to:

examine the legalization application in which there is a waivable ground of exclusion carefully, but sympathetically. The committee's intent is that legalization should be implemented in a liberal

and generous fashion, In most cases, denials of legalization on the basis of the waivable exclusion should only occur when the applicant also falls within one of the specified non-waivable grounds of exclusion.^{40/}

MALDEF concurs with these organizations. However, it is important to point out two potential areas of concern.

Public charges. The current law provides that an alien can be denied a visa if the alien is:

 in the opinion of the Consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges.^{41/}

The INS currently has broad discretion in this area and there are currently no statutes or regulations defining "public charges" or specifying what kind of evidence is needed to satisfy this criterion.

Such a regulation could negatively impact undocumented aliens depending upon the standard used. These aliens tend to be at the lower end of the economic spectrum. It is estimated that thirty-one percent of Hispanics have incomes less than \$10,000 per year. Undocumented aliens would probably be in even lower income brackets. Thus, some undocumented aliens may not qualify under the public charge provisions even though they have lived for years on a meager income.

There are several ways to deal with this problem. The current consular practice in the adjudication of I-130 petitions does provide some guidance. The public charge provisions could be satisfied in a variety of ways. First, an applicant can present evidence that his or her own funds are sufficient to support the alien and dependants. (e.g., proof consisting of bank and insurance statements, proof of real estate or security interests, income from investments and other sources, etc.). Alternatively, an applicant could show evidence

that the applicant's annual income exceeds the federal poverty guidelines. Another form of evidence may be a definite offer of permanent employment as proof of continuous or stable employment. Finally, the applicant could be allowed to submit an affidavit of support or be allowed to post a public charge bond.

The important thing is to provide regulations which are flexible allowing undocumented aliens to prove their financial responsibility. It is also important to include aliens who can show they have lived, worked and supported themselves, even if only on a meager income.

Another critical issue is how the receipt of public assistance benefits by a U.S. citizen children will affect the eligibility of their undocumented parents. Citizen children are statutorily eligible for public assistance programs such as AFCD, food stamps or Medicare. As long as citizen children are the sole beneficiaries, this should not prejudice the parents' application for legalization.

The question surrounding the public charge provisions point out a number of issues. The grounds for exclusion provisions and how they will be interpreted need to be clearly delineated so that undocumented aliens will be able to determine whether they are eligible for legalization. Secondly, regulations promulgated to interpret such provisions should be released with sufficient time to allow ample opportunity for public comment.

D. COST OF LEGALIZATION

It is undeniable that legalization will have certain costs associated with it. The Congressional Budget Office (CBO) has prepared perhaps the most realistic cost estimates available.^{42/} Nevertheless, several serious omissions from the cost estimates exist

which inflate the cost estimates of legalization and give an inaccurate picture of the financial responsibility of the undocumented alien population.

An accurate picture of the contributions of the undocumented alien population, as well as costs, is essential since the Congress is seeking to reduce legalization costs by making undocumented aliens ineligible for federal financial assistance, Medicaid, or food stamps for a five year period after the applicant becomes a permanent resident alien. ^{43/} To the extent that aliens have been contributing more in taxes than they have received in social services, it would be unfair to withhold social services to those who might need them.

The CBO notes that the "generally accepted" estimates of the undocumented alien population ranges between 3 and 6 million. ^{44/} In April, 1983, however, the U.S. Census Bureau estimated that 2 million undocumented aliens had been counted in the 1980 census. (900,000 of which were from Mexico). Given a fairly substantial undercount, the Bureau estimated the total undocumented population at no more than 4 million, possibly quite a bit less. ^{45/} The CBO acknowledged the Bureau's figures, but still selected an estimate midpoint between the 3 and 6 million estimates: 4.5 million undocumented aliens. ^{46/} This figure is better than most estimates, but it is still higher than what the actual population is likely to be. As a result, cost estimates based upon those figures are likely to be inflated.

All assessments to date of the undocumented population have focused upon their negative cost impact on the general economy. It is generally perceived that undocumented aliens drain the federal, state and local governmental finances. Recent studies, however, have indicated that quite the contrary may be true.

One study indicated that while undocumented aliens received nearly \$241 million dollars in social services, they also paid \$2.535 billion in taxes to Federal, State and Local governments.^{47/} Thus, undocumented aliens, rather than draining governmental treasuries, have actually supported them. One problem is that most of these taxes are paid to the federal treasury in the form of federal income taxes, or social security taxes, etc. However, most social services are distributed at the local governmental level. Thus, the equitable solution is not to deny social services to undocumented aliens, but to redistribute revenues to state and local governmental entities.

Another study revealed that the undocumented aliens, rather than negatively impacting upon the U.S. economy, actually enhance .

The undocumented alien population is an integral part of many Hispanic communities.^{48/} They contribute to those economies by working and buying foods and services. Another study noted that there was a lack of correlation between the presence of undocumented workers in selected cities and states and the unemployment rate.^{49/} Thus, the undocumented population tends to be a positive, rather than negative influence on the U.S. economy. These positive influences should be reflected in cost estimates.

Finally, a recent study refutes the generally held belief that undocumented aliens drain governmental treasuries by extensive use of social services and welfare programs.^{50/} The study interviewed 822 Mexican immigrants in 1973 (70% of which had formerly been undocumented aliens). Six years later these individuals were interviewed again. The study found that newly legalized immigrants

from Mexico were not likely to go on welfare. Unemployment among them was consistently lower than for the population as a whole. Also, legalized immigrants did not leave low-wage employment to compete for higher paid occupations.

All of these studies indicate that the undocumented alien is not a drain on the U.S. economy or the governmental fisc. On the contrary, these aliens contribute more in tax revenues than they draw in services. They are also an integral part of their communities and have a positive impact upon these economies. Thus, it would be unfair to deny undocumented aliens the economic protections which they have long supported with their labor and taxes.

III. H-2 TEMPORARY AGRICULTURAL WORKER PROGRAM

The House Judiciary Committee (and the Senate) propose to codify and expand the H-2 temporary worker program.^{51/} This program, enacted in 1952, was originally designed as a temporary measure to secure foreign labor where unique and unforeseen labor shortages arose. However, it was also recognized that such a program could displace domestic workers and depress wages and working conditions. This conclusion has been confirmed by a number of subsequent studies.^{52/}

The experience of West European countries also supports these conclusions.^{53/} Europe began guestworker programs when several countries suffered serious domestic labor shortages. Laborers were imported from Italy, Yugoslavia, Turkey and Spain. It was hailed as a boon in the fifties and sixties, but now present very serious socio-political problems. The growing presence of foreign workers and their families has fueled xenophobic reactions. The use of outside workers and their families has fueled xenophobic reactions. The use of outside workforce has institutionalized discrimination and encouraged

the development of second class "citizens." Moreover, the "guest" workers who were originally viewed as temporary became permanent--legally or illegally. All this suggests that temporary worker programs compound the problem of unlawful immigration, rather than solve it.^{54/}

The Judiciary Committee's bill proposes to establish "a specific statutory basis for an H-2 program for agricultural workers, separating it from the H-2 program for non-agricultural workers."^{55/} In addition, the legislation is also designed to streamline the labor certification process, making it easier and faster to process requests for foreign laborers.^{56/}

Under present regulations issued by the Department of Labor (DOL), an employer must submit a petition requesting foreign laborers 80 days prior to the date of need. An employer seeking H-2 workers must certify that (1) American workers are not available, and (2) wages paid to H-2 workers, as well as working conditions will not adversely affect the wages and working conditions of workers in the U.S. The DOL must then make a determination at least 20 days in advance of the actual use. This gives the DOL 60 days to determine whether there are American workers available and to disseminate job information to them.

The proposed legalization codifies these regulations with one major exception. The House H-2 provision shortens the period DOL will have to determine the availability of domestic workers. The period is shortened from 80 to 50 days. This means that DOL will only have 30 days to get job information to domestic workers. Given the high mobility of agricultural workers it will be extremely difficult to find them in a thirty-day period.

The current H-2 proposal falls short in its efforts to protect domestic workers. MALDEF recommends Congress impose the following controls on the program:

1. Establish a cap on the total number of H-2 workers that can enter the U.S. annually. Since the inception of the present H-2 program in 1952, the use of H-2 agricultural workers has not exceed 30,000. In 1982 the total number of foreign workers was about 42,000, not all of which were agricultural workers. However, the present H-2 program does not have a ceiling. The numbers have remained constant simply because employers have made few petitions. Domestic organizations interested in protecting the rights of domestic and foreign workers have carefully scrutinized the program. However, the current changes to the H-2 program will make it easier for employers to seek and acquire cheap foreign labor. To protect domestic workers it is important to limit the number of foreign laborers who may enter the U.S.

2. Remove economic incentives for importing labor. Even if employers are required to pay foreign laborers the same wages and provide the same working conditions as are available to domestic workers, there is still an economic incentive to hire H-2 workers Since employers are not required to pay unemployment insurance or social security taxes. Such exemptions should be eliminated.

3. Domestic workers and interested employee groups should be allowed to appeal the DOL certification of H-2 applications. Currently, it is only employees who have such a right. It is important that domestic workers who will be directly affected by the employment of foreign labor be allowed to intervene in the process which affects their livelihoods.

4. Procedures should be established to ensure aggressive recruitment of domestic workers. For example, employers should be required to maintain records of their recruiting efforts.

Transitional Agricultural Program

Both the Senate and the House versions of the H-2 programs include a "transitional" agricultural program. This program was established to "assist agricultural employers in shifting from employment of unauthorized aliens to the employment of eligible individuals. The irony of the provision is that, on the one hand, proponents of immigration reform have argued that undocumented aliens take jobs away from U.S. workers. Now, agricultural employers express the fear that sufficient domestic workers will not be available to harvest crops if undocumented workers are eliminated. It also points to the need for as expansive a legalization process as possible. If undocumented aliens are so integrated into the economy as the need for a transitional program seems to suggest, then such aliens should be integrated into our economy and society through the legalization process.

In the Senate the Judiciary Committee forwarded a bill to the floor without a transitional program. The Senate, however, approved an amendment proposed by Senator DeConcini. The DeConcini amendment provides for a three year transitional program. In the first year, an agricultural employer would be allowed to hire 100 percent of his workforce from undocumented workers. In the second year, only 67 percent of his workforce could be undocumented. In the final year, only 33 percent of the workforce could be undocumented. At any time after three years the agricultural employees would be subject to employer sanction provisions to the same extent as non-agricultural employers.

The potential for exploitation is tremendous. Employers will decide which undocumented employees will be allowed to work and which employees will have to stay. This will give employers a tremendous amount of leverage over the remaining undocumented workers. Especially since they will hold the threat of the unavailability of jobs for undocumented aliens given the application of the employer sanction provisions to other sections of the economy. Thus, employers may dismiss employers who complain about wages or working conditions.

The House version, under the Lungren amendment, is worse. It provides a system in which employers document their employment needs and make a request to the Attorney General for foreign workers to fill those needs. The Attorney General, after making the appropriate investigations, issues work permits to the employer. The employer can send the permits to the U.S. Consulate in a foreign country in order to get workers. More likely, the employers will distribute the permits to workers he selects. Like the Senate version, the number of permits are reduced to 67 percent in the second year and 33 percent in the third year. Like the Senate, the potential for abuse and exploitation is everpresent.

The "transitional" agricultural program and the H-2 program generally points out a few things about the concept of employer sanctions. First, undocumented employees are not taking jobs from American workers, but work in jobs that domestic workers are reluctant to take. Furthermore, the transitional program points out the contradictions in the immigration policy reflected in this bill. On the one hand, Congress seeks to "control" immigration and the flow of individuals into this country. On the other hand, Congress wishes to insure a constant source of cheap, controllable labor. It must be remembered that undocumented workers and foreign workers generally are not a mere factor of production. They are human beings; concern for their rights is absolutely essential in the consideration of any immigration reform.

FOOTNOTES

1. H.R. 1510, 98th Cong., 1st Sess., Sec. 101.
2. Id.
3. Milton Morris and Alberto Mayio, Illegal Immigration and U.S. Foreign Policy v.6 (U.S. Dept. of Labor, 1980).
4. Id.
5. 681 F.2d 624 (9th Cir. 1982).
6. See, e.g., U.S. Civil Rights Commission, The Tarnished Golden Door 70 - 73 (Sept., 1980) (An excellent discussion of some of the impact "Operation Jobs" had upon Employers and U.S. citizens and legal resident aliens.
7. Id.
8. Various MALDEF offices throughout the country recieved numerous inquiries. Employers requested information concerning their obligations under the pending employer sanctions legislation. Employees complained they were being asked to produce additional proof of legal status.
9. Id. Many employees complained they were asked to provide additional proof of a right to work, and were either threatened with, or actually terminated.
10. MALDEF staff attorney's conference with the firm's counsel.
11. Hagar, U.S. Officials Defend Bilingual Vote List Probe, Los Angeles Times (May 5, 1982).
12. See U.S. Dept. of State, Visa Bulletin; See also American Council for Nationalities Services, Interpreter Releases (New York).
13. Id.
14. Facts as relayed to a MALDEF Staff Attorney by the alien seeking legal advice.
- 15.
16. H.R. 1510, 98th Cong., 1st Sess., Sec. 101.
17. 42 U.S.C. §2000(e).
18. 42 U.S.C. §2000(e)-2(e).
19. Id.
20. See, e.g., Dothard v. Rawlinson, 433 U.S. 321 (1977); Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Griggs v. Duke Power Co., 401 U.S. 424 (1975).

21. Espinoza v. Parah Manufacturing Co., 414 U.S. 86 (1973).
22. Garcia v. Gloor, 618 F.2d 264 (5th Cir. 1980), cert. denied 449 U.S. 1113 (1981); see also Garcia v. Rush-Presbyterian-St. Luke's Medical Center, 660 F.2d 1217 (7th Cir. 1981); Cf., Vasques v. McAllen Bay and Supply Co., 660 F.2d 686 (5th Cir. 1981).
23. Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978); Int'l Brhd of Teamsters v. United States, 431 U.S. 324 (1974).
24. Id.
25. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).
26. 42 U.S.C. §2000(e)-5()
27. Statistics received from the EEOC.
28. Id.
29. Hart Amendment No. 1273, 129 Cong. Rec. S6820-22 (Daily Ed. May 17, 1983).
30. Larry Stammer and Victor M. Valle, Most Aliens Regain Jobs After Raids, Los Angeles Times (August 1, 1982).
31. This does not mean an alien is automatically qualified for legalization, an interpretation suggested by the characterization of the legalization program as an "Amnesty" program. Establishing continuous residence from the cut-off date merely allows an alien to apply for legalized status.
32. MALDEF has also consistently rejected the two tier approach adopted by the Senate (S-529). We would urge the House members to keep the single tier approach as reflected in the House version of the Immigration Bill.
33. Offered in the Judiciary Committee, See S. Rep. No. 98-62, 98th Cong., 1st Sess., §245A(d)(2).
34. Cranston Amendment No. 1276, 126 Cong. Rec. S6907 (Daily Ed., May 18, 1983).
35. Cranston Amendment No. 1278, 126 Cong. Rec. S6910 (Daily Ed., May 18, 1983).
36. H.R. Rep. No. 98-115, supra, at 69.
37. Id.
38. Id.
39. Id.
40. Id.

41. Immigration and Naturalization Act, §212(a)(15).
42. See H.R. Rep. No. 98-115, supra, at 99 - 110.
43. H.R. 1510, 98th Cong., 1st Sess., §301; See also H.R. Rep. No. 98-115, supra, at 71.
44. H.R. Rep. No. 98-115, supra, at 105.
- 45.
46. Id.
47. Harry L. Hufford, Chief Administrative Officer, Cost of Services to Undocumented Aliens (April 14, 1982).
48. Gilberto Cardenas, An Assessment of Chicano Views and Reaction Toward Undocumented Immigration, University of Texas, Austin (1983).
49. Estevan T. Flores, The Impact of Undocumented Migration on the U.S. Labor Market (April 1, 1983).
50. Alejandro Portes, Latin American Immigrants to the U.S., Summary of a Six Year Study of Their Adaptation (March, 1982).
51. H.R. 1510, supra, §211.
52. See, e.g., 41 Fed. Reg. 25018 (January 22 1976); Agricultural Prevailing Wage Survey Summary Report, New York State Department of Labor (1978); Review of Rural Manpower Service, Department of Labor 37 (1972).
53. See, e.g. Miller and Yeres, A Massive Temporary Worker Program for the United States: Solution or Mirage? World Employment Programme Research, Working Papers, International Labor Organization, at 14 - 16 (Geneva, 1979); Phillip L. Martin, Guestworker Programs: Lessons from Europe, U.S. Dept. of Labor, Bureau of International Labor Affairs (Washington, D.C., 1980).
54. Id.
55. H.R. Rep. No. 98-115, supra, at 65.
56. Id.

**TESTIMONY BY ARNOLDO S. TORRES, NATIONAL EXECUTIVE DIRECTOR, LEAGUE OF UNITED
LATIN AMERICAN CITIZENS**

Good Morning Mr. Chairman, Members of the House Committee on Agriculture, my name is Arnolando S. Torres, I am the National Executive Director for the League of United Latin American Citizens (LULAC), this country's oldest and largest Hispanic organization with over 110,000 members in 43 states. On behalf of LULAC, I very much appreciate the opportunity to come before you today and present our views on H.R. 1510 the Immigration Reform and Control Act of 1983. We are especially pleased to have the committee discuss the inequities of the legalization provisions of H.R. 1510, and must compliment the Chairman for identifying this issue as one deserving attention.

Over the last year and one-half we have testified on some 12 occasions before House and Senate Committees on the Simpson-Mazzoli immigration reform legislation. Despite the many times we have presented our views on this issue Congress has chosen to ignore our concerns and recommendations. This hearing is another opportunity for us to present our opinions, critiques, and recommendations regarding immigration reform.

We firmly believe that this legislative package is a poor response to dealing with the major population movements to the United States. It fails to address conditions in underdeveloped and developing countries which create "push factors" and cause immigration to this country. Unless we begin to deal with the origins of this movement which are the poverty, neglect and injustice which has existed in many of the third world countries, illegal immigration will not only continue but most probably will increase due to the ever worsening socio-political and economic conditions in these countries.

We are extremely disturbed that Congress, in its concern to address this controversial issue, is eager to pass any legislation, regardless of its lack of effectiveness and consequences. Clearly this is not the manner in which our country's founding fathers envisioned Congress conducting the business of this great nation. We hope that the House of Representatives does not follow the same example as the Senate who chose to side with the argument that "something is better than nothing."

Employer Sanctions and Employment Discrimination

Proponents of H.R. 1510 believe that the major reasons why undocumented persons immigrate to the United States is for purpose of employment. If in fact employment is the major magnet for undocumented persons, then proponents

advocate that U.S. employers much be prohibited from hiring such persons. Acknowledging this concern makes employer sanction provisions which make it illegal for U.S. employers to hire undocumented workers, the cornerstone of immigration reform legislation. A major contention and fear of ours is that the concept of employer sanctions is inherently discriminatory. Over the last two years that has been the opinion of not only LULAC but also the American Civil Liberties Union (ACLU), Mexican-American Legal Defense and Educational Fund (MALDEF), U.S. Commission on Civil Rights, Asian American organizations, labor unions, academicians and various members of Congress. Most recently the American Bar Association (ABA) also indicated its opposition to this concept because of its discriminatory impact. In addition, the Notre Dame University Law School, in preparing presentations for the Select Commission on Immigration and Refugee Policy, also concluded that employer sanctions would result in employment discrimination for Hispanics and as an alternative proposed more aggressive labor law enforcement as a means of dealing with undocumented workers who displace American workers.

The reasons for our concerns is due to the perception the American public has of the immigration issue. Media coverage, operations by the Immigration and Naturalization Service (INS) and immigration enforcement policies have portrayed the issue as being one primarily with Hispanics. Illegal immigration in this country has long been perceived by Americans as an Hispanic phenomena. "Operation Jobs," conducted by the INS in April illustrates this point. Illegal Canadian and European immigrants survived "Operation Jobs" virtually unscathed, while Hispanics, and persons of color bore its wrath. The institution of employer sanctions, for the hiring of undocumented workers, promises to have the same result, Hispanics will be most notably suspected of illegal status. Only certain individuals possessing certain physical and linguistic characteristics are viewed as creating the problems sanctions are proposed to eradicate. As a consequence, sanctions have not been developed to address all undocumented flows but primarily Hispanics who will be targeted. Employers who are presently concerned with government intrusion will attempt to avoid INS, who will be responsible for examining any employee documentation. Employers with a Hispanic workforce will be likely targets of INS enforcement. Under these circumstances employers will refrain from hiring individuals who have certain physical and linguistic

characteristics--Hispanics, thus resulting in employment discrimination. Employers wanting to avoid questioning or reviews by INS will simply choose not to hire persons who will cause INS attention.

Proponents of H.R. 1510 and sanctions contend that there is no discrimination for documents must be shown by everyone seeking employment. However, the bill only requires employers to keep documents of those they hire and not those applying. This is where discrimination can and will take place, for there is no information on applicant pools which results in non-Hispanics being hired and Hispanics rejected.

Sanctions, like other laws which are proposed to be on their face non-discriminatory, will be applied in an environment which is already pervasive with employment discrimination. It must be clearly understood that sanctions will be implemented on the same basis as other labor laws enacted which have a documented history of being habitually violated in one form or another.

Proponents of employer sanctions contend that the affirmative defense provision of H.R. 1510 relieves the employer of any fear of being sanctioned if a good faith effort has been demonstrated to verify status, however this provision does not preclude the INS from coming onto a workplace to review employee document files to confirm legitimate status and hire. Contrary to the misinformed view of certain proponents of H.R. 1510, the INS does not solely depend not does it only respond to tips from the general public about the employment of undocumented workers. It has been my personal experience that oftentimes INS simply makes random checks on employment places based on the make-up of the workforce. In other words if there are Hispanics who INS personnel believe may be undocumented based on appearance, the INS will enter the workplace, question, and detain persons. This is precisely the intrusion factor which will cause some employers to refrain from hiring Hispanics for fear of INS intrusion.

Also, proponents who concede the potential for employment discrimination contend that this legislation contains provisions which provide sufficient protections. Unfortunately, some have misrepresented the significance of these provisions which are no more than reports and monitoring efforts which do not provide any redress for discrimination.

It has been said that H.R. 1510 is not an anti-discrimination bill and should not be bogged down by provisions protecting against such actions. However, it is very important to understand that this bill is indeed calling on U.S. employers to discriminate against undocumented workers who have much in common with U.S. citizens and legal residents based on physical and linguistic characteristics. Clearly Congress should not allow any law to pass this body without doing all that is necessary to insure that discrimination is not sanctioned, and that adequate protections guarding against such consequences be enacted. The present legislation fails to reflect this concern and commitment, while its major proponents appear to be willing to allow such discrimination to manifest itself against Hispanics. This leads us to ask if Congress is willing to legally sanction discrimination against a growing population of U.S. citizens and legal residents who have long contributed to the greatness of this nation. Is not Congress concerned about protecting Hispanic civil rights? Up to now we can only respond that the impress due to this bill is that it is not and that it chooses to ignore the warnings and views of fellow Hispanic Congressional Members, and community organizations who have long raised this fear. I assure the Members of the subcommittee that our fear of discrimination is not fabricated but based on real experiences of our people's treatment in this country.

Alternatives and Recommendations

We have long advocated the enforcement of existing labor law as a reasonable alternative to the present form of employer sanctions. It would remove the economic incentive an employer has in hiring undocumented workers who cannot report labor law violations due to their vulnerable status. This approach would be less costly, threatening, and cumbersome, while being enforceable, cost-effective, and improve labor market conditions. It would reenforce our society's disdain for substandard wages and working conditions, while relying upon existing and accepted administrative and enforcement machinery.

The major reason employers hire undocumented is due to their ability to violate U.S. labor law. The restaurant, garment and agricultural industries are the primary employers of undocumented workers. The Department of Labor has found consistent and flagrant violations of labor law (article attached) in these industries which has made it possible to hire undocumented workers. Our

alternative would focus the enforcement of these laws in these industries and on those employers known to have a "pattern or practice" of violations. This approach would not only be to curtail the employment of undocumented by insuring compliance with the law, but also improve the working conditions of the American worker while not allowing the depression of U.S. working conditions and retarding of wage and labor market advancements.

We have attached the conclusion of the Employer Sanctions Research Study conducted by the Center for the Study of Human Rights/Notre Dame University Law School 1980, which discusses changes in labor law so as to more effectively discourage the hiring of undocumented workers.

U.S. labor law has been poorly enforced in this country, a fact which has made it easy for the hiring of undocumented. If properly enforced, there is more of an incentive for an employer to comply with labor law than with any type of employer sanctions program. This is due to the long case history developed, as well as to the financial repercussions facing employers. In addition, enforcement must be targeted to those industries previously mentioned in order to be more cost-effective. Our proposal is in essence an employer sanctions program, without discrimination.

Priority

Proponents of H.R. 1510/S. 529 have argued that the Equal Employment Opportunity Commission (EEOC) will be able to handle all charges of employment discriminations as a result of employer sanctions. This is unfortunately a major misrepresentation of EEOC functions. EEOC is limited under Title VII to covering employers who have 15 or more employees and who work more than 20 calendar weeks. These are major limitations imposed by Title VII as well as the fact that EEOC does not handle employment discrimination due to alien status. We have attached a Congressional Record insert of May 17, 1983 in which the Congressional Research Service (CRS) outlines the limitations of Title VII and EEOC in dealing with employment discrimination caused by employer sanctions. It must also be understood that 3.7 million of the 4.3 million total U.S. employers are not covered by Title VII or any other anti-discrimination law. A large portion of Hispanics are employed by small employers with less than 14 employees, and thus have no protections against discrimination--of any type.

It is this glaring void which has us urge this Committee to develop an amendment such as the one sponsored by Senators Gary Hart and Carl Levin which would establish a mechanism of redress designed to provide remedies to persons discriminated against due to H.R. 1510 and employer sanctions. In essence such an amendment would:

- o Prohibit employment discrimination against those persons not otherwise protected by Title VII, the equal employment opportunities portion of the Civil Rights Act of 1964. These are the persons most likely to suffer such discrimination because of employer sanctions. In particular, it prohibits all employers of between 4 and 14 employees, and employers whose 15 or more employees work fewer than 20 weeks during the year, when hiring, from discriminating on the basis of national origin. Similarly, it prohibits employers of more than three employees, when hiring, from discriminating on the basis of alien status, except if otherwise required by law.
- Enforce this prohibition, the amendment expands the authority of the new Immigration Board, created under this bill, to hear and rule upon charges of immigration-related employment discrimination. It establishes an independent special counsel to investigate charges and bring cases of this new form of employment discrimination. It grants the Board cease-and-desist enforcement power along with the authority to impose fines and order payment of up to 1 year of back pay.
- Create a private right of action--so that a person who believes herself or himself a victim of such discrimination can petition the Board or the Federal courts, if the special counsel declines to bring such a case. Moreover, it gives the special counsel authority to sue an employer in Federal court who engages in a pattern or practice of employment discrimination.
- Under this amendment, there is no possibility of double, or conflicting, remedies, by its very terms, it provides relief only to persons who are precluded from seeking relief under Title VII. Of course, a person who is the victim of employment discrimination for two reasons--say, alien status and sex--can still seek relief under Title VII to the extent it applies.
- Require an employer of more than three employees, after a first violation of these provisions, to keep for 6 months the name and address of each person applying for an available job opening.

H-2 and Transitional Workers

Since 1917*, this country has operated a temporary guestworker program of one type or another. In fact, this country instituted that first such program as a result of conflicts between immigration restrictionists against Mexicans, and American employers. The U.S. Department of Labor resolved this conflict by utilizing the ninth proviso of the Immigration Act of 1917 which gives the Secretary of Labor discretion to admit the temporary importation of Mexican contract laborers. It is ironic that such a program would be enacted after a period of anti-immigration, however, it does reflect the aggressive demands by U.S. employers for cheap labor. Prior to 1917 this demand had been met by other immigrant groups and was not to be hindered by such sentiments. This appetite for cheap labor was satisfactorily fed by the initiation of this first "Bracero Program" which allowed the Secretary of Labor to exempt Mexicans from the head tax required of each immigrant and the ban on any immigrants over age 16 who could not read. These workers were to be primarily employed in agricultural labor. Accompanying this program were rules and regulations designed to protect the worker, however, they were never effectively enforced. The program was justified as being a national defense policy and should have terminated after World War I. However, the program continued until 1922 and was terminated then only because employers could no longer justify it as a national defense policy. During its existence, 76,862 Mexicans were recorded as entering the country while only 34,922 were recorded as returning to Mexico.

Again, during World War II, employers, primarily in the agricultural industry of the Southwest, had lobbied to establish another "bracero program" to deal with so-called labor shortages due to the war. Despite the fact that the Mexican government opposed such a program, (hiring of Mexican citizens by foreign nations is prohibited by Article 123 of the Mexican Constitution of 1917-), despite the flourishing of the Mexican economy during the 1940's, despite the fears many Mexicans held due to the "repatriation movement," an agreement was negotiated in August of 1942. The program was to terminate in 1947, however

* Also see attached excerpts from staff report of the U.S. Select Commission on Immigration and Refugee Policy

employers appeared to benefit from it so much that the program was continued informally and without regulation until 1951. The program at this time was once again formally enacted by Congress but finally terminated by the U.S. on December 31, 1964. It was accompanied by provisions mandating protection for workers, but once again there was a failure to enforce these protections. Throughout this time, and after final termination we find that illegal immigration began to grow with many of these workers, once being exposed to the economic opportunities of this country choosing to remain illegally, as well as having relatives and friends join them.

We provide this overview to underscore the fact that the primary reason for temporary workers has always been the cheap labor they provide to primarily Southwest agricultural employers, and not for the purposes to quell illegal flows. If anything, history proves that such a program has fostered and increased the growth of undocumented workers in the U.S. Also, it demonstrates that while the Mexican was and continues to be desirable as a laborer but not as settlers, this country will do anything to secure their employment in the U.S. without effectively protecting their rights as workers and human beings. In fact, the Dillingham Commission Report of 1911 described Mexicans as being undesirable as settlers because of our "Indian-like characteristics, our low level of skill," the view that we are illiterate; but if you wanted "Mexicans" to work for cheap, the door appeared to be wide open formally or informally, and you didn't have to worry about our rights. It appears to many of us in the Hispanic community that this is the prevailing attitude even today as evidenced by the H-2 and transitional worker provisions contained in H.R. 1510.

These provisions have the potential, according to estimates by the agriculture industry, of providing some 500,000 or more temporary workers. They have been proposed and accepted by Congress for fear that the agriculture industry would be without adequate labor supply due to the enactment of employer sanctions and legalization. Growers believe that the legalization program will discourage present undocumented workers from wanting to work in agriculture and that a transitional workers program designed to ease the labor supply problems growers believe would be caused by H.R. 1510. The transitional

workers program is intended "to assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of eligible individuals. This "shift" has been going on since 1917 as our previous comments indicate. This transitional program is yet another effort by the agriculture industry to secure what they regard as necessary labor.

In light of the previous history of abuse and exploitation by the agriculture industry it is extremely difficult for us to support any effort to expand the H-2 program or establish a transitional program. It is not our intention to label all growers as being abusive and exploitive, however based on such a poor history of treatment of America's farmworkers who are U.S. citizens and legal residents and foreign workers, it is difficult to anticipate any serious effort to protect their rights.

Due to legislative compromises during the 97th Congress, the H-2 program significantly expanded. However, the proposed H-2 expansion was to be made without adequate safeguard to protect workers and without any provisions for improving the deplorable working and housing conditions affecting migrant agricultural workers in the United States.

Our apprehension for any expansion of H-2 programs without adequate safeguards are based on the documented history affecting migrant agricultural workers, and we strongly feel that the expanded H-2 provisions of H.R. 1510 are insensitive in light of the fact that:

- Within the last two years, 23 persons were convicted, 22 active investigations were conducted through enforcement of anti-slavery statutes involving migrant workers,
- From the lemon growers in Arizona to the asparagus fields in New Jersey, migrant workers have a life expectancy of only 49 years compared to 73 years for the average U.S. citizen;
- Eighty-six percent of migrant children will not finish high school compared to the national average of 25%;
- The median income for a migrant family of six, with children too often picking, is only \$3,900/year which is less than half the government's official poverty income of \$9,287/year and very far below the income of the average American family income of \$22,388;
- Several hundred workers suffer pesticide poisoning every year, and data is available on the number of injuries suffered by farmworkers every year.

Though the perception that migrant farmworkers are predominantly Hispanic is true, persons of all ethnic heritages fill the ranks of the highly exploited, yet nonetheless, human, workforce. Recent studies indicate that Hispanic persons comprise approximately 50 to 55% of the farm labor force,

blacks 30% and white and others 15-20%. We assert that a case on the historical and current living and working conditions of these workers and their families must be made on their behalf during committee mark-up hearings on the H-2 provisions.

These deplorable documented living and working conditions dramatize a need for immediate corrective action prior to subjecting additional workers to such conditions.

We strongly urge that, at minimum, Congress actively correct the enumerated deplorable conditions by:

- A) Calling upon DOL to investigate the conditions of labor camps in the U.S.;
- B) Direct an immediate vigorous enforcement of existing labor laws in cooperation with the U.S. Department of Justice;
- C) Direct DOL to report its findings to the appropriate Congressional committees.
- D) Clarify how the annual appropriation contained in the H-2 provisions will be expended. The bill indicates that these monies will be spent on a) recruiting domestic workers and b) monitoring terms and conditions of their employment. We would like to have emphasized the need to have these monies either increased or the majority of them targeted to enforcing the laws which are to protect the H-2 workers and attempt to insure that they will have adequate housing, working conditions and general treatment.

Perhaps more upsetting than any other aspect of this debate is the tenor in which discussion on the H-2 program and its association to the legalization program is made. In the past, Congress has stated its interest and concern that whatever be done on immigration reform must allow for foreign workers to continue to enter and work in the U.S. While many in Congress would discuss the need to keep these immigrants and foreigners out of the U.S., they are fairly adamant in their concern and comments to let them in if they are going to work. It seems inconsequential that in most cases these same workers will be working for cheap wages and substandard working conditions. It is this attitude by our representatives in Congress which best illustrates their insensitivity toward our community. It is also difficult to understand that throughout the debate last year on Simpson-Mazzoli the Congress, major interest was to control and stop the flow of people to this country, however, when the issue of cheap labor was raised there was every effort made to insure that foreign workers were allowed to enter but not remain as citizens.

Unfortunately, despite our continued efforts, and those of you Mr. Chairman, to insure that domestic and foreign workers are protected and treated like human beings, the House Subcommittee on Immigration, Refugees, and International Law in its mark-up of H.R. 1510, has in essence created a "guestworker" program and failed to not only include provisions protecting workers rights but also failed to thoroughly discuss the potential exploitation, the potential abuse and the probable consequences on workers who would participate in this program, as well as the implications for America's farmworkers.

It is with this in mind that we indicate our firm support for the package of amendments you, Congressman George Miller, introduced last year which were designed to insure that our domestic labor force be given first priority for employment and to guarantee that domestic and foreign workers' rights are enforced and protected.

The amendment package concerning H-2, clearly sets out employer responsibilities to employees regarding working conditions, wage and compensation standards, and transportation. These provisions reflect a commitment to insuring workers' rights as well as emphasizing the priority that American workers must and shall be considered first for employment before petitioning for foreign workers. We regard this approach as much more thoughtful for it recognizes the historical and institutional abuses which have confronted prior waves of "guestworkers" and H-2 workers and makes a serious attempt at providing a mechanism to insure that workers whether domestic or foreign, are provided fair and equitable treatment. In addition, a very important provision of this package has the U.S. Secretary of Labor certifying "in writing to the Attorney General and to the Congress that there are sufficient funds and personnel available to adequately enforce the provisions of this subsection, before any additional workers can be brought in above fiscal 1982 levels. We regard this amendment crucial if we are to maintain an effective monitoring of the H-2 program and insure proper treatment of the worker.

In closing, Mr. Chairman, we regard Mr. Miller's amendment package as absolutely imperative if we are to humanize the treatment of foreign, as well as domestic workers in this country. As equally important, it is a key example of giving priority to employed Americans for employment opportunities, which is a chief aim of the immigration reform legislation. In our opinion, these amendments are in the best interest of this country and in the best interest of all workers who have historically been abused and exploited, and must be adopted.

LEGALIZATION

Adjustment of Status Program:

Legalization has been cast on many fronts as an unfair program granting amnesty to law breakers as a blank check for "illegals" to get on the entitlement rolls, and as an unbearable strain on state and local governments. The purpose of a legalization program is at least two-fold. First of all, legalization is to allow those persons who are presently here without the benefit of documents the opportunity to apply to the Attorney General for an adjustment of their status. Secondly the program seeks to identify or register those same persons so as to minimize the level of exploitation attendant to an undocumented status and to extend the benefits of citizenship or legal residency to those persons.

Existing immigration law prohibits the granting of U.S. residency, permanent or temporary, to persons who are likely to become public charges. The proposed legislation, H.R. 1510, has similar restrictions for those seeking an adjustment of their status through the legalization program.

LULAC contends that any legalization which makes adjustment of status discretionary that is within the discretion of the Attorney General of the United States or his/her representatives dooms the program from the outset. Legalization must be a right created by positive legislation, not a discretionary enfranchisement subject to political influences. To that end, LULAC asserts that positive legislation create a commission representative of the impacted groups, which is empowered with oversight authority and the development and implementation of rules and regulations for such a program.

Initially, it should be made abundantly clear that a two tier type adjustment of status program which disables participants from both necessary and practical access to entitlement programs will perpetuate the sub-class of persons legalization is intended to eradicate. Further, dialogue now as in the past suggests that it is questionable that only those who advocate on behalf of Hispanics through the legislative process, such as LULAC, find themselves alone highlighting both the intended purpose and the benefits which flow from eradicating a sub-class whose existence is not in the best interest of the country in general nor of Hispanics in particular.

The Bureau of the Census in its 1977 report to the Select Commission on Immigration and Refugee Policy, estimated that approximately three to six million persons live and work in this country without the benefit of documents which would identify them as "legally admitted aliens. Their presence and continued entry are due to several factors, not the least of which has been an immigration policy that has conveniently fluctuated to satisfy the needs of industrial and agricultural development in this country. During times of economic prosperity when the demand for minimally skilled and unskilled labor has been significant, that need has been reflected by the absence of any reference to the so-called negative impact of illegal immigration. Conversely, during times of economic hardship as now a restrictionist immigration policy has prompted both the rounding up of "perceived illegals" and mass deportations. These perceived illegals may in fact be legal residents. At minimum, they are persons entitled to share the benefits of a national development they have contributed to by coming here when needed and working where needed. Conveniently, it is all too often forgotten, as this country's history documents, that Constitutional protections attach to all persons within our borders, not just to those fortunate enough to have come at the right time and place.

Political expediencies serve no real purpose other than promoting short-sighted public policy under the guise of reasoned constructive reform. Seldom do political expediencies address the real problems of disgruntled and unemployed constituencies. Restrictionist arguments also are convenient for they seek to maintain the status quo. Now as in the past, restrictionists argue that each undocumented worker displaces an American in need of work while not providing any incentive for bettering either working conditions or wages in those industries in which employment of undocumented workers predominates. The Washington Post, in its August 11th editorial "Law and the Illegal" reiterates that restrictionist view and cites as well an estimate that 4 to 9 million undocumented workers are in this country. Assuming that the Post's contention was acted on and apprehension and deportation of all illegals were possible, 9 million of this country's unemployed would then have job opportunities.

Curiously, the Administration in its version of the restrictionist view, argues that to legalize the undocumented workers, will give the very people whom other restrictionists and government agencies identify as taking jobs from

the signal that they can now quit their jobs and
 absurd to argue that people who are working full time
 are robbing the nation's welfare coffers on the other.
 forgotten are the numerous contributions made by these
 the national interest. Their contribution stimulates
 emp. as well as tax revenues. To date the Administration, Congressional
 Budget Office and restrictionist supporters have been silent on the issue
 of revenue impact to the federal budget. This silence too is convenient.

This revenue assessment does not purport to assess the total impact
 but rather supplies one aspect which heretofore has been absent.

The following tax contribution and/or payment profile per income dollar
 is based on an undocumented worker. We assume the following:

- that there is a total of 6 million undocumented persons within this country's borders
- that of those 6 million, 80% are earning \$4.81 per hour and 20% are earning \$9.00 per hour
- that these persons are working
- that these persons are single and claim only one exemption
- that their employers are making the required deductions
- that these persons, who file yearly income taxes, do not itemize
- that FICA deduction is 6.7% of their salary
- that withholding (federal) is based on 1982 tax schedules

Based on an hourly wage of \$4.81, 250 work days per year, and FICA contributions at the rate of 6.7% and undocumented worker pays a total of \$644.54 FICA per year. Further, the same undocumented worker pays, according to 1982 tax schedules, a total of \$1,130.00 per year in withholding taxes. Eighty percent of the undocumented worker pool contributes by working a total of \$8,517,792,000.00 in FICA and withholding taxes.

Based on an hourly wage of \$9.00 250 work days per year, and FICA contributions at the rate of 6.7% an undocumented worker pays a total of \$1,206.00 FICA per year. Further, the same undocumented worker pays, according to 1982 tax schedules, a total of \$3,105.00 per year in withholding taxes.

Twenty percent of the undocumented worker pool contributes by working a total of \$5,173,000,000.00 in FICA and withholding taxes.

The above tax contributions and/or payments do not include the money that is paid for goods and services in the forms of excise taxes which include but are not limited to tobacco, services, gasoline, transportation fares, etc. In addition, state and local taxes are not included.

Despite the contributions being made by the undocumented, H.R. 1510 contains provisions which will make those persons qualifying for legalization ineligible for "any program of financial assistance furnished under federal law" including "assistance under the Food Stamp Act of 1977" for a five-year period. We regard this restriction as raising constitutional issues and inequitable. We are concerned that if a person has been here 10 years and has never drawn any federal benefits and has paid taxes, owns property, been employed, and becomes unemployed during the 5 years, he or she cannot draw any assistance despite having contributed to assistance funds. Denial of assistance, whether it be food stamps or any other program will force these persons into a sub-class status. Should they become unemployed, their alternatives become few if any. We would recommend that the restriction on food stamps be repealed.

Notes from the Underground

Millions of illegal workers will not be celebrating Labor Day

The dressmakers' workroom is a small L-shaped area on the fourth floor of a dilapidated building in downtown Los Angeles. Tattered sheets drape the dirt-streaked windows. Seven seamstresses, ages 18 to 45 and all from Latin America, sit in a tight row, huddled over their humming machines, monitored by a stocky Hispanic woman with a shock of bright orange-red hair. On a nearby desk rests a broken time clock. The workers were not paid last week; they may not be paid this week. The boss will pay them when she has the money. Mahana. Perhaps tomorrow.

For most Americans, Labor Day is a time to relax and reflect upon the hard-won rights gained by workers in dec-

making machines going around the clock. The din is deafening, and the heat from the ovens almost unbearable. Says one employee, a 25-year-old mother of two: "It's like hell."

Federal officials estimate that up to 6 million illegal aliens now reside in the U.S. Last year alone as many as 1.5 million unauthorized immigrants eluded American border patrols. This swelling reservoir of willing workers makes it easy for unscrupulous businessmen to flout U.S. labor laws. A Labor Department survey completed last year found that 57% of U.S. businesses paid less than the minimum wage, and 21% failed to give time and a half for overtime hours.

The exploitation of alien labor has

state law-enforcers have inspected 2,833 Los Angeles restaurants and found that 65% of them were breaking wage laws.

A Labor Department survey of 385 Chicago-area restaurants revealed that 91% were underpaying their workers. Two restaurants in Miami Beach, Newport Pub and Roney Pub, were ordered by a federal judge this summer to pay \$250,000 in back wages to more than 900 past and present employees. A part-owner of both restaurants is Walter Kaplan, the vice mayor of Miami Beach.

AGRICULTURE. From the cucumber patches of Maryland through the orange groves of Florida to the tomato fields of California, thousands of farm workers live in squalid shacks with communal latrines and no running water. Fruit and vegetable growers assert that they pay the minimum wage, but the money is often funneled through labor contractors who actually hire the workers. In many cases,



Nations, Mexicans and American blacks begin another day of picking peppers on a farm near Immokalee, Fla.

In stormy sweatshops, scorched fields and cramped kitchens, they toil under conditions that seem out of the pages of Charles Dickens.

ades past: the 40-hour week, paid vacations and sick leave, to name a few. But while millions pause next Monday to enjoy backyard barbecues or walks on the beach, a silent, almost invisible labor force will toil on without a break. In steamy sweatshops, scorched fields and cramped kitchens across the U.S., these underground workers will labor long hours for low pay under conditions that seem out of the pages of Charles Dickens.

The force that drives the underground workplace is the free flow of illegal immigrants across U.S. borders. Sometimes illiterate, always frightened, the aliens form a vast pool of easily exploitable labor. Century-old Manhattan lofts that are dangerous firetraps once again house garment industry sweatshops where Chinese, Koreans and Cubans make as little as \$60 a week for 70 hours of work—less than a third of the U.S. minimum wage of \$3.35 an hour. Polish refugees have been found cleaning out oil-storage tanks in New Jersey for \$2 an hour or less. At a small factory in Chicago, shifts of Mexicans working twelve-hour days keep two tortilla-

also led to the mistreatment of American workers. Says Craig Rerrington, a Labor Department official who oversees investigations of wage law violations: "We cannot identify any particular job where there is only abuse of illegal aliens. We see them working side by side, illegal immigrants and U.S. citizens."

Labor union leaders and many politicians charge that the uninvited foreigners have taken jobs away from Americans and flattened wages at the lower end of the economic ladder. Says Harold Washington, a black congressman from Chicago: "The mere presence of a large number of illegal aliens is depressing wages generally, and forcing unskilled blacks to take dirtier, lower-paying jobs." In most industries that employ large numbers of mental workers, labor law violations can be found. Some of the worst offenders:

RESTAURANTS. Despite the often daunting price of dining out, restaurant busboys and dishwashers are among the most underpaid and overworked American laborers. In the past three years, California

these so-called crew chiefs, who are usually immigrants themselves, deduct exorbitant amounts from worker salaries for food, rent and transportation.

A notorious employer of illegal farm laborers is Ukegawa Brothers Inc., a large tomato grower in northern San Diego County. Says Chris Harimine, an assistant to the president of the United Farm Workers of America: "The Ukegawa workers are living on the ground, under trees, under shrubs, in makeshift huts. They're in a semi-slave situation." The workers bathe in irrigation canals and often drink contaminated water.

GARMENT INDUSTRY. Throughout New York City, the center of American garment manufacturing, the kind of horrid sweatshop common in the early 1900s is flourishing anew. In Chinatown lofts, Queens garages and South Bronx storefronts, workers toil from dawn until well past dark sewing pants, shirts and blouses for as little as 8¢ apiece. The rooms are often dimly lit and poorly ventilated. In many cases, huge rolls of cloth block

The Flaw in U.S. Immigration Reform

Latinos View It as Failure to Deal With Fundamental Problems

By ARNOLDO S. TORRES

Those of us in the Latino-American community who were intricately involved in immigration reform had a dual goal: the achievement of good and sound public policy, through legislation that would not cause major difficulties for Latinos.

The so-called Simpson-Massoli bill is flawed on both points; it expresses Congress' overriding concern to address population movement into this country with little thought to effectiveness or consequences. When Simpson-Massoli emerged from the Senate last month with no improvement, the extremely disturbing message from Congress seemed to be that "something is better than nothing."

Unfortunately, that something fails to put into place a foundation for dealing with the fundamental problem of illegal immigration: why record numbers of people are attempting to enter the United States.

Proponents of this legislation, now bound for action by the House, contend that we must regain control of our borders and that we must stop the hiring of undocumented workers. These are reasonable and proper objectives, which we support conceptually. However, it is simplistic and unrealistic to assume that an attempt to accomplish these objectives alone will effectively decrease or stop the human flow to our shores. If there is to be true immigration reform, there must be true reform of immigration policy. This would require Congress to deal with the question of why our government welcomes people who are fleeing communism and systematically rejects people who are fleeing oppressive right-wing regimes that we are supporting. Even Congress' limited objective will not be met unless it mandates an improvement in the workings of the Immigration and Naturalization Service, and better cooperation between the INS and the State Department.

As Simpson-Massoli moved through the Senate, advocates of immigration reform were dismayed by the ignorance and off-hand attitude of a number of senators and their aides. Many saw it as a problem that had arisen in the last decade, and felt sure that this bill would readily put a stop to it. They seemed unaware of our government's long history of encouraging and stimulating

the flow of willing cheap labor from Mexico.

On three occasions Congress has enacted legislation establishing temporary guest-worker programs to feed the insatiable appetites of America's agricultural industry. This conveyed the message to Mexican nationals that they were welcome here and would find employment sanctioned by the U.S. government. These guest-worker programs created a relationship between the two countries in which the population movement across borders was mutually beneficial. U.S. growers and consumers prospered due to cheap labor costs, while Mexico was provided what some refer to as a "safety valve."

This relationship became the norm even after the temporary programs officially ended. In the last two decades it was joined by major population movements triggered by sociopolitical conditions reaching a crisis point in either underdeveloped and developing countries.

These migrations have been long developing. They are the product of many decades of poverty, injustice, neglect and poor government in the Western Hemisphere—conditions that are strongly associated with U.S. foreign policy in the region.

Throughout this century our government has followed a policy of supporting any foreign government that is "friendly" to American objectives, regardless of the inequities and abuses that these governments have foisted on their people. After decades of such treatment, after decades and generations of unrelieved poverty and injustice, the people in these countries have begun to seek political and economic refuge in our country. Most recently they have come, in massive numbers and with extraordinary difficulty, from El Salvador, Nicaragua, Guatemala, Haiti and Cuba. The irony is that they are fleeing problems in their homelands that reflect the shortcomings of U.S. foreign policy and the neglect, ignorance and selfishness with which we have treated the Caribbean and Latin America—our "backyard," as our highest policy-makers revealingly call this region.

These movements of desperate people will continue and increase as these countries become poorer and as U.S. foreign policy

continues to foster an environment of political instability and economic stagnation. So it is foolish to presume that Simpson-Massoli will have a substantial effect on this situation. Unless we confront the real problems, it is false and irresponsible to claim that this legislation is "immigration reform," and that it will stem the flow of undocumented people. Instead, it is Latino-Americans who will suffer the pain because of our physical and linguistic characteristics.

We do not expect perfect legislation. We do want the American public to understand our own government's role in creating situations that now pose serious policy concerns, and that there is no quick-fix legislation that can provide immediate relief. Cross-border immigration is a major issue with deep and complex roots; it requires more patience, honesty, intelligence and pragmatism than Congress has demonstrated. What we need is an overhaul of the Immigration and Nationality Act and true reform of the workings of the Immigration Service and the State Department. We must have a mechanism that will allow us to properly examine the effect of U.S. foreign policy on immigration, and we must have better working relationships with countries that are sending their people to ours.

Finally, we urge a serious assessment of the extent to which, and reasons that, U.S. citizens may be displaced by undocumented workers—and why citizens are not willing to accept certain types of employment.

We regard the above approach as honest and responsible. It does not have the political attraction of claiming to be a quick fix. But neither does it make a whole category of Americans scapegoats and victims of discrimination. Nor does it exploit the desperate emotions of Americans affected by their President's faulty policy.

We—all Americans—know that there is "something better than nothing", sound, realistic, durable and honest public policy. What Congress is offering as "immigration reform and control" is closer to nothing.

Arnaldo S. Torres is national executive director of the League of United Latin American Citizens in Washington.

(Additional attachments are held in the committee files.)

**STATEMENT OF GARRY G. GEFFERT,
WEST VIRGINIA LEGAL SERVICES PLAN, INC.,
MARTINSBURG, WEST VIRGINIA**

Mr. Chairman, members of the Committee, thank you for the opportunity to address you. My name is Garry G. Geffert. I am a staff attorney with the West Virginia Legal Services Plan, Inc. in Martinsburg, West Virginia. Martinsburg is in the middle of an apple producing region less than ninety miles from this chamber. Much of the apple crop is harvested by temporary foreign workers, or H-2 workers. For the past three years, I have represented many United States workers who have been denied employment by the H-2 employers. I will address today some of the difficulties my clients have experienced.

Under current law, H-2 employers are required to make active efforts to recruit workers in the United States for a sixty-day period. At the end of the sixty-day period, the Department of Labor has twenty days to certify whether there are sufficient workers for the jobs. All this activity is prior to the harvest. Then, the employer is required to hire any qualified U.S. workers who apply for work within the first 50% of the job period. Even under these

provisions, U.S. workers are being denied jobs in West Virginia. The bill before this Committee would result in more workers being denied jobs.

The bill would eliminate the requirement that U.S. workers be hired in the first half of the harvesting season. That ignores the nature of the system on the East Coast by which farmworkers in the United States find employment.

U.S. workers begin arriving before there is work in an area, and after crops in another area are finished. Employers in West Virginia who use domestic farmworkers make their labor camps available to the workers when they begin arriving in the area before the harvest. That way, they are assured of having workers when the harvest begins, usually just after Labor Day. The largest H-2 employer in my area, however, has refused to allow anyone to stay in its camp until the date work begins, even when a local organization offered to pay the utility bills for the early opening of the camp. U.S. workers are told: We'll hire you if you come back in two weeks. Last year, approximately 200 U.S. workers came to West Virginia in

the few weeks before the apple harvest but had to move on because there was no place to live until the work began.

Workers continue to come to the area through the first several weeks of the season. That is in keeping with established hiring practices and patterns. The major H-2 employer itself follows that pattern of hiring with H-2 workers. In each of the last two years, it has changed its request for workers from a request for all 500 workers in the first week of September to having the workers brought in over a three-week period on a staggered basis, with the largest contingent of workers requested for the final of the three weeks. The current bill, however, would cut off the ability of U.S. workers to obtain jobs at least a day before the work started.

I have represented fourteen U.S. workers who, even under current law, were refused employment by Tri-County Growers, Inc., during the first month of the 1980 apple harvest. A Department of Labor Administrative Law Judge and the Regional Administrator have ruled that the U.S. workers were denied jobs unlawfully. Donaldson and Gignac v. Tri-County Labor Camp, Inc. (D.O.L. A.L.J. 1983);

Sejour, et al. v. Tri-County Labor Camp, Inc. (R.A. Region III 1982)(appeal before D.O.L. A.L.J. pending). In another case, a worker made three visits to the office of Mt. Levels Orchards, an H-2 employer, trying to get a job, yet got none. Ackerman v. Mt. Levels Orchards (D.O.L. A.L.J. 1983). I have affidavits showing that many more U.S. workers are turned away by growers who use H-2 workers.

In 1982, the unemployment rate in Berkeley County, West Virginia, increased from 10.1% in August to 13% in September. The state Job Service attributed the 2.9% increase to United States farm-workers who had been unable to find work in local orchards, according to an article in the November 17, 1982, edition of the Martinsburg Evening Journal. Yet during that September, Tri-County Growers, Inc., which is located in Berkeley County and annually receives over 400 H-2 workers, was complaining that it could not find U.S. workers to harvest the crops. There simply is no real effort to recruit U.S. workers.

As part of the H-2 employment recruitment effort, the employer must submit a job offer through the interstate employment service system that complies with the minimum requirements set out in Department of Labor regulations. With the exception of annual changes in the wage rates, the requirements have been unchanged since 1978. The interstate system has been manipulated by the H-2 employers to frustrate the recruitment requirement. The employers annually submit the job offers at the last minute, so that part of the sixty-day recruitment period is used correcting the errors built into the job offers by the employers. For example, last year one West Virginia employer offered new employees a wage rate of only \$1.81 per hour, far below the minimum wage and clearly unlawful. Further, all the West Virginia H-2 employers attempted to increase expected productivity rates, a practice that is clearly forbidden by current regulations, as the Court recently ruled. NAACP, Jefferson County Branch v. Donovan (D.D.C. 1982). Because of these plainly unlawful terms, the job offers were not corrected so they could be distributed through the interstate system until late August -- less than three

weeks before the beginning of the harvest. For one grower, the time period between the acceptance of the job offer and the certification by the Department of Labor that no workers were available in the U.S. (the recruitment period) was only 24 hours -- insufficient time for any U.S. worker to have been informed of the job offer. Last year, West Virginia job offers did not make the forty-mile trip to the Pennsylvania apple area until late September -- nearly a month into the season. While West Virginia growers complained they were unable to find domestic workers, there was an oversupply of apple pickers just forty miles away. Not coincidentally, there were no H-2 workers in the Pennsylvania apple harvest. History suggests that shortening the recruitment period would only encourage further manipulation by employers.

Real affirmative recruitment efforts by the employers are needed. Our local newspaper has reported on the annual trip made by a delegation of West Virginia employers to Jamaica well in advance of the apple harvest to discuss the use of H-2 workers. No similar trip is made to Florida, the Carolinas, or other supply states to make similar arrangements for U.S. workers. Employers in West Virginia who make those contacts are able to find U.S. workers.

I thank the Committee for its attention, and request that the record remain open so the panel can supplement its brief remarks with more detailed information.

STATEMENT OF GREGORY SCHELL,

MIGRANT DIVISION, LEGAL AID BUREAU OF MARYLAND

SALISBURY, MARYLAND

Good afternoon.

My name is Gregory Schell. I am managing attorney of the Migrant Farmworker Division of the Legal Aid Bureau of Maryland. Prior to this January, I worked for three years representing migrant farmworkers in southern and central Florida. I appreciate the opportunity to appear before the Committee today to express several of the concerns of my clients with respect to the temporary foreign labor program in agriculture.

Throughout my tenure with legal services, I have been approached by American farmworkers who have voiced complaints regarding the temporary foreign labor, or H-2, program. The majority of these complaints involve instances where American workers believe they have been wrongfully denied jobs in favor of H-2 workers. My purpose today is not to discuss the particular complaints of these American workers. Instead, I would like to focus on the problems my clients in particular and domestic workers in general face in seeking redress for these perceived wrongs.

The present Immigration and Nationality Act does not expressly provide aggrieved domestic workers any legal redress for instances in which they have been unlawfully passed over for jobs in favor of H-2 workers. By contrast, the regulations governing the Department of Labor's temporary labor certification procedures provide a wide range of administrative and judicial remedies for employers who have had their requests for H-2 workers denied. Agricultural employers have on a number of occasions utilized these remedies to obtain reversals of Department of labor denials of requests for H-2 workers. For example, in 1977 and 1978, H-2 employers from seven northeastern states successfully challenged Labor Department actions on their H-2 applications.

In order to produce a temporary labor program that equitably balances the interests of both employers and American workers, it is essential that all parties affected by any particular decision regarding the admission of H-2 workers have a right of judicial review. Unfortunately, H. R. 1510, adopted by the Immigration Subcommittee of the Judiciary Committee, does not include such a

provision. Other proposals presently before the House expressly provide that any person aggrieved by a violation of the law may seek review in an appropriate federal court. In your consideration of legislation in this area, I urge you to incorporate similar language.

Under current law, domestic workers who feel they have been wrongfully denied jobs in favor of H-2 workers have only one recourse. They may file a complaint with the Department of Labor. If the Department of Labor finds that the complaint is meritorious, only very limited sanctions are available. The Department of Labor cannot require the offending employer to pay restitution to the domestic worker. The sole sanction that can be imposed by the Department of Labor is for the Department to refuse to grant future H-2 certification requests for the employer in question. This sanction has certain obvious shortcomings. It is a fairly drastic remedy to be undertaken against an employer and, as a result, the Labor Department is reluctant to impose it in all but the most egregious situations. More importantly, any such action by the Labor Department is but

small comfort to a domestic worker who has been unlawfully denied a job because an employer preferred to utilize H-2 workers.

Several examples of the problems domestic workers have had with the present H-2 system and their inability to obtain redress underscore the need for an express right to judicial review in any legislation adopted by the Committee. In 1980 Lucius Donaldson and Robert Ackerman sought apple-picking jobs with two West Virginia growers who have many years relied upon H-2 workers during the harvest season. Both Donaldson and Ackerman are American citizens who have for a number of years worked as apple pickers in the autumn months. Both Donaldson and Ackerman were rejected for employment by the growers in question. The two Americans filed administrative complaints with the Labor Department. In May 1983, after administrative hearings at several levels, a federal administrative law judge ruled in favor of Donaldson and Ackerman. However, the administrative law judge lacked the authority to require the growers to pay damages to Donaldson and Ackerman. It is possible that the Labor Department will deny future H-2 applications from the growers in question.

However, this will do nothing to compensate Donaldson and Ackerman for the weeks they sat unemployed while the growers employed H-2 workers.

A similar situation exists with respect to the Florida sugarcane harvest. The Florida sugarcane industry annually employs nearly 9,000 H-2 workers to cut the sugarcane. In 1980 thousands of Cuban and Haitian refugees applied to the sugar companies for jobs as canecutters. Since these refugees had been granted permission to seek gainful employment in the United States by the Immigration and Naturalization Service, they were entitled to the same preference over H-2 workers generally afforded American workers. Over 1,000 refugees started the 1980-81 harvest as canecutters; only about 100 completed the seven-month season. Many of the refugees were terminated by the companies for alleged non-productivity. Having reviewed the employment records of many of these workers, I can state that a number of these terminations were questionable at best. The workers' concerns with these firings increased the following autumn, when many of them once again sought canecutting jobs. They discovered

that the Florida sugarcane growers had adopted a policy of refusing to hire any worker from the previous year's harvest who had failed to complete the season, regardless of the reason. A number of these workers filed complaints with the Labor Department, claiming that they should be hired for the 1981-82 harvest season or, at a minimum, be given some opportunity to challenge their terminations from the previous year. The Labor Department refused to grant even administrative hearings to these workers. Many of the workers involved remained unemployed for weeks or months on end during the 1981-82 sugarcane harvest season while thousands of H-2 workers were employed within a five-mile radius of the Haitian workers' homes.

The Haitians' claims may be determined to be justified or it is possible that the employers' action will be upheld. The problem is that we will never really know the answer to this question if the Haitian workers are not allowed their proverbial "day in court." It certainly appears unfair to permit the H-2 employers to have a full range of administrative and judicial remedies open to them while

denying the same to domestic workers who have sought jobs with H-2 employers but have been denied employment, for whatever reason.

My clients do not ask for special treatment. They merely seek the same rights that are presently guaranteed to employers seeking H-2 workers. Just as certain growers' livelihoods may hinge on a Labor Department decision regarding H-2 workers, so does the economic survival of my clients, all of whom are indigent farmworkers. I urge you to expressly provide for access to judicial review for all aggrieved parties in any legislation the Committee adopts with respect to the temporary foreign labor program.

Thank you for your attention and concern in these most important matters.

STATEMENT OF
ROBERT N. MOORE
VIRGINIA FARMWORKERS LEGAL ASSISTANCE PROJECT

Mr. Chairman, Members of the Committee:

My name is Robert N. Moore. I am an attorney with the Virginia Farmworkers Legal Assistance Project of Peninsular Legal Aid Center, Inc., with an office in Belle Haven on Virginia's Eastern Shore. Prior to April 1st of this year, I had worked for almost three years as an attorney with the Farmworker Unit of Pine Tree Legal Assistance, Inc., in Lewiston, Maine. The major portion of my professional experience in Legal Services has been the representation of clients on issues relating to the use of "H-2" workers in agriculture and logging.

As we are all aware, the present H-2 statute and regulations establish certain minimal terms and conditions of employment which must be offered to agricultural workers by employers seeking to be certified to use temporary foreign workers. These minimal terms and conditions are designed, in theory, to avoid the potential adverse effect the use of foreign workers will have upon the wages and working conditions of U.S. workers. Such minimal terms and conditions of employment and avoidance of the adverse effect of foreign workers are vital to the present H-2 program and must be preserved as an integral part of any future program.

I understand that the Labor Standards Subcommittee of the House's Education and Labor Committee is thoroughly considering the preservation of these specific protections for U.S. workers and I implore

this Committee to similarly thoroughly consider these protections with a view toward supporting their incorporation in any substantive amendments to the H-2 provisions of the bill under discussion today.

Specifically, I offer certain observations and comments with regard to wage rate floors, productivity requirements and training periods.

The adverse effect upon domestic workers caused by the use of temporary foreign workers is most often a direct and real depression of wages. Agricultural harvest workers are almost always paid on a piece rate basis. If we look at piece rate wages in the apple industry of Maine, an industry in which H-2 workers have been used each year for many years, the adverse effect on wages is a clear and inescapable conclusion.

Each year the Maine Department of Labor conducts an in-season survey of piece rate wages paid apple harvest workers. Beginning about 1979, the Department started to report the results of its survey in a form which distinguished between wages paid by orchards using H-2 workers and orchards using only U.S. workers. Even though the comparison is between orchards only a few miles apart, the wage disparities were startling.

For example, the 1981 in-season wage survey results of the Maine Department of Labor indicated that harvest workers in orchards using only U.S. workers were paid an average 60¢ per unit, while orchards

using H-2 workers were paying domestic workers 47¢ per unit. At the employer-established production standard of 56 units per day for 6 days per week, this is a loss of about \$41.00 per week per worker.

Obviously, even the present guaranteed hourly Adverse Effect Wage Rate (AEWR) and prevailing piece rate wage floors, required pursuant to the H-2 statute and regulations, have been ineffective. Without the preservation of these wage floors, the protection of U.S. workers' wage rates from the adverse effect of foreign workers would be non-existent.

Intimately connected to wage floors are reasonable productivity requirements and training periods. U.S. agricultural workers must be assured of a fair opportunity to train and have their performance measured by a reasonable productivity standard.

In Maine, U.S. apple pickers have been required to report for work at the earliest part of the harvest prior to the arrival of foreign workers. This early starting date does not coincide with the peak apple harvest. U.S. workers are then required to selectively pick the few ripe apples. The result is termination of the workers after a few days due to low productivity. Then, foreign workers arrive at the work site, pick at a time when there are far more ripened apples per tree and their higher productivity rate is cited as justification for the prior termination of unproductive U.S. workers.

In addition, H-2 workers on the East Coast in apples and other crops have traditionally been males, in excellent health, relatively youthful, and have experience. The experience factor is not to be underestimated when productivity standards are considered. During the fall of 1981, a newspaper article appeared in the local papers of Maine and other newspapers of national circulation, which reported about the use of temporary workers in the apple harvest of Maine. In particular, the article cited the fact that many workers return each year to the same orchards and that, in fact, one H-2 worker had been working for a Maine grower each year for the past ten years. This occurs throughout the industry.

It has been suggested that the establishing of training periods and productivity standards based upon the performance of experienced H-2 workers is analogous to using the batting average of the All-Star team as the standard performance level expected of all major league baseball players. Such a productivity requirement would be absurd when applied to baseball. The absurdity is mysteriously transformed into reasonableness when applied to U.S. farmworkers.

We may all be able to agree on one thing: the present functioning of the H-2 system is a failure. In order to insure that the proposed new H-2 system is not destined to similarly fail in its effect, I would suggest that all assurances of U.S. worker protection be included.

This would particularly include the following:

1. That Adverse Effect Wage Rate and prevailing piece rate wage floors be preserved.
2. That productivity standards be fixed, in the sense that they may not be increased in response to an increase in the wage floor, and the standards be reasonably related to the productivity of an average worker.
3. That training periods in fact train and are reasonably related to what can be expected of a worker during the specific period in which the training takes place.

Respectfully Submitted,

Robert N. Moore

STATEMENT OF THE TEXAS SHRIMP ASSOCIATION
ON HR.1510, IMMIGRATION REFORM AND CONTROL ACT OF 1983
TO THE AGRICULTURE COMMITTEE, U.S. HOUSE OF REPRESENTATIVES
JUNE 15, 1983
PRESENTED BY RALPH RAYBURN, EXECUTIVE DIRECTOR

Mr. Chairman and members of the Committee, I am Ralph Rayburn, Executive Director, Texas Shrimp Association, Austin, Texas. The Texas Shrimp Association is a trade association for the shrimp industry of Texas with membership consisting primarily of individuals and corporations harvesting shrimp in the Gulf of Mexico. We have over 200 corporate members of our association representing approximately 450 shrimp vessels and shore side facilities.

General comments on the Texas shrimp industry will be made by Gustavo Barrera, a shrimp vessel owner from Port Isabel, Texas. Also present before you today are Mr. Julius Collins and Mr. Guy Pete, shrimp vessel owners from Brownsville, Texas. They will be available for questions at the close of our testimony.

As discussed by Mr. Barrera, the proposed legislation, H.R. 1510, will create some severe uncertainties for the Gulf shrimp industry in many Texas ports. Should, however, the Congress be disposed to pass on this legislation, we would request that special considerations be given our industry in relation to access to the H-2 Agricultural Workers Program. This would best be in the form of special regulations by the Department of Labor on utilization of the H-2 program by our industry. I note that a precedent has already been set by the western sheepherders provisions of 1982.

When a documented foreign work force is required to harvest

the shrimp, they will be provided the same provisions as domestic crewmen would be allowed. Basically, the vessel serves as living quarters during the course of the work effort. These vessels have berths for the crew, toilet and shower facilities, kitchen facilities and various other conveniences depending on the age of the vessel including air conditioning, television and stereo music systems. There is a normal practice that food provisions are an expense paid by the crew.

Besides the availability of housing and food under the H-2 program, other provisions such as transportation to the work site, guaranteed working hours and weekly payments would each need to be considered in light of the normal working practices of the shrimp industry.

As was mentioned in earlier testimony, workers on fishing vessels with 10 or fewer crewmen who receive payment in the form of a portion of the catch or sale of the catch are considered to be self-employed by the Congress under the Tax Reform Act of 1976. This is the case in the Gulf shrimp industry. Since there is no direct employer-employee relationship the normal methods of defining these roles within the regulations would require further explanation. This situation would be particularly important in the determination of the appropriate individual to submit the job order and request for certification to the Department of Labor. The traditional methods of employment within the industry are that the boat owners recruit the captains, who in turn recruit their crew. Currently the H-2 program states that the employer would be the individual to submit the job order and request for certification.

Another concern under the current H-2 program is the determination of the required workforce in sufficient time to have it available at the proper time. Unlike harvesting products in the terrestrial area, predictions of marine fishery resources abundance is quite difficult. If upon the opening of the shrimping season, shrimp prove abundant, captains will often recruit additional crewmen to service the catch. A wait of 70 days after realization of the crop abundance would cause the peak portion of the season to be missed.

Our chief concern is that there be flexibility in the H-2 regulations. The need for a workforce is seasonal and the local workforce cannot meet our needs. If there are no locals interested in working on the boats, we need to have the opportunity to work through the H-2 program, but we need a shorter time period in which to obtain H-2 workers and a clear understanding of responsibilities for vessel owners and captains.

I have concentrated on the ways in which the Texas shrimp industry is different from the agricultural community but there are many ways in which the two are similar. Shrimping off the coast of Texas is a seasonal activity primarily taking place from July to December. The length of the season and the amount of shrimp to be harvested are dictated by factors of nature. Climate, salinity, temperature, and rainfall each affect the shrimping season. Shrimp harvesters have no control over these factors nor can they fully predict their impact.

The work is seasonal and labor intensive. The product is perishable and when the harvest is ready, the workforce is needed immediately. Also, there is a large turnover of the workforce.

In summary, we urge that this Committee include language in either H.R. 1510 or the report accompanying that bill which will allow for flexibility in the H-2 program so that the shrimp industry of Texas may continue to operate and serve the many consumers of America's favorite seafood.

Mr. Chairman, thank you for the opportunity to express our views before your Committee today.

TESTIMONY ON THE IMMIGRATION CONTROL AND REFORM ACT OF 1983
PRESENTED BY GUSTAVO BARRERA
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES AGRICULTURE COMMITTEE
ON JUNE 15, 1983

Mr. Chairman and members of the Committee, my name is Gustavo Barrera and I own and operate a fleet of Gulf shrimp vessels fishing out of Port Isabel, Texas, approximately thirty miles from the Mexican border. I am also a director of the Texas Shrimp Association and President of the Port Isabel Shrimp Producers Association.

I would first like to thank you for this opportunity to testify on my industry's behalf. All too often laws are passed which have the reverse effect of their intent. Providing a forum of this nature goes a long way toward rectifying this type of dilemma.

Good statistics with respect to the incidence of illegal aliens employed by the shrimp fleet are difficult, if not impossible, to come by due to the fact that Gulf shrimp fishermen do not fall into normal employment patterns. Gulf shrimp fishermen are considered independent contractors and are paid in kind (i.e. a percentage of the total catch). Therefore, the Federal Government considers them to be self-employed.

The normal procedure for recruiting hands on a fishing vessel begins with the boat owner recruiting a vessel captain, who must be a U.S. citizen or a naturalized U.S. citizen, as required by law if he is to be the master of the vessel. The captain then in turn recruits his crew. Due to the nature of the fishing operation, this is, as it should be, his choice. The subsequent firing

and replacement of crew members is likewise his duty and responsibility. Although the boat owner records Social Security numbers and reports crew income, more extensive crewmen records are simply not available. As this type of fishery demands that vessels are at sea anywhere from a minimum of two weeks to several months at a time, crew members tend to be very transient by nature. Quite often crew configuration changes from trip to trip and from port to port. With the exception of the captain, the crew which left the owner's dock may not necessarily be the crew which returns at trip end due to transfers at other ports.

Another factor common to industry employment is the seasonality of the fishing operation. Due in large part to the loss of traditional fishing grounds to the south which now fall within Mexico's 200 mile exclusive economic zone, U.S. Gulf shrimping fleets are forced to lay idle during the winter and early spring months. On the other hand, during the heavy productive months in the late summer and early fall, demand for crew members increases dramatically as vessels take on larger crews to handle seasonal catch increases. Later in the season catches decline and much smaller crews suffice.

The void in seasonal crew supply is not easily filled because of two basic reasons. First, work of this nature, besides being very specialized, is considered undesirable to the vast majority of the general work force. Second, on-board training of potential fishermen in the highly active portion of the season is dangerous for both the trainee and the remainder of the crew. So, you can well see that training new personnel to meet the temporary surge in demand is the least desirable alternative.

Raw estimates of the percentage of illegal aliens in the Gulf fleet work force probably lie in the range of 10 to 50 percent, depending on the time of year, demands of the shrimp resource, and port areas. However, the incidence of alien employment is almost exclusively confined to the vessel crew. Few, if any, illegal aliens are employed by shore side maintenance and processing facilities.

As I understand it, the basic argument for stricter enforcement of immigration standards revolves around two basic sentiments. First, there is job displacement. In reality, demand for experienced fishermen far outweighs domestic supply at this critical period. The alien work force is an overflow valve for this seasonal demand. Unfortunately, quite often a vessel must remain tied to the dock when a sufficient crew is not available. This inevitably occurs when production is at its peak and profitability, and fishermen income potential is likewise at a high point. Consequently, were this employment safety valve denied, legal U.S. wage earners would also be denied the chance to earn to their potential. Due to the specialized nature of their skill, alien fishermen generally do not attempt to assimilate into the general U.S. work force, but return to Mexico to seek similar employment when seasonal demand occurs to the south.

The second major argument with respect to immigration control involves the illegal aliens' demands on public services. Due to the fact that shrimp fishermen spend their working lives at sea, taxpayer supplied services are not utilized by the alien work force. Dependents of these alien crew members, as a whole, remain

in Mexico and are, therefore, no burden on local taxpayers and school districts.

In light of these facts, I implore you to weigh heavily the consequences on the shrimp industry of any proposed legislation which would upset this delicate employment demand balance. It could have the effect of devastating an already suffering industry. Furthermore, we are small businessmen who do not have the resources to accomodate the investigation and employment data collection needed in determining the citizenship status of all vessel employees. This camel's back can ill afford any additional straws.

I would again like to thank you for this opportunity to convey my feelings and share my fears with you today. I would be honored to answer any questions concerning the industry viewpoints on these matters.

ON BEHALF OF:
UNITED FARM WORKERS
OF
AMERICA, AFL-CIO

Stephanie Bower,
Legislative Representative

On behalf of the United Farm Workers, I thank you, Mr. Chairman, for the opportunity to appear before this Committee and express our point of view on the subject of H-2.

As you are well aware, our Union's membership reside mainly in California with members in Texas, Florida, Arizona and Illinois.

Agricultural employers would lead the Congress and the American people to believe that their fruits and vegetables would rot on the vines and in the fields without some type of bracero program -- be it guestworkers or H-2's.

Our Union has brought stability, good wages and working conditions to the lives of many farm worker families. Such benefits as: medical coverage, clinics, pension plans, paid vacation, sanitary and safety conditions, and children able to get an education are changes which farm workers now enjoy where they hold membership in the United Farm Worker's Union.

UNEMPLOYMENT & LAYOFFS

Unemployment is extremely high in agricultural counties in California as of a month ago: 34.4 percent

in the Imperial County; 19.9 percent in Stanislaus County; 18.6 percent in San Joaquin; 23 percent in San Benito; 14.9 percent in Kern; 14.7 percent in Monterey; and 16.9 percent in Merced. These estimates are conservative as many farm workers don't file unemployment claims with the state and are, therefore, not reflected in these figures.

In a study conducted by Dr. Tim Horgan of St. Leo College, St. Leo, Florida, the conclusion is reached that there are 3 to 400,000 agricultural workers available and only 100,000 agricultural jobs.

In November of 1982, while after 200 H-2 lettuce workers were certified to come into Florida from Mexico, our Avon Park office reported 1,000 unemployed farm workers in the area while 230 of our members were still laid off from the previous season. In Arizona, hundreds of farm workers had been laid off and 170 UFW members were on the waiting list; and our Texas office reported that unemployment among farm workers in the Valley, Mr. Chairman, was 50 - 60 percent.

At that same time, our Salinas, California field office reported a waiting list of 1,500 Union members. Salinas is a very large lettuce growing area -- the membership there are experienced lettuce workers.

As of only a month ago our other field offices in

California reported the following statistics regarding unemployment and lay-offs.

- Calexico: 5,000 unemployed farm workers in the area.
- Coachella: 1,500 Union members under contract laid off -- Another 1,000 members in the area unemployed.
- Delano: Highest unemployment since the recession began -- 1,200 workers unemployed from ranches under contract. Of the 1,200, 500 have been laid off. Another 1,000 workers in the area are unemployed.
- The Tex-Cal Land Management Company gave notice in April to 1,000 workers that their services were no longer needed. They then brought in labor contractors with a history of violating the old Farm Labor Contractor Act to hire a docile workforce.
- Livingston: 750 - 800 unemployed Union members.
- Oxnard: 100 members on waiting list.
- Parlier: 900 members unemployed or 90 percent unemployment.
- Salinas: Continuous list of 1,300 - 1,500 members.
- San Ysidro: 438 members on waiting list.

- Santa Maria: 200 of 500 unemployed members.
Several thousand total number in the area.
- Hollister: 400 members have been laid off.
3,000 unemployed farm workers in the area.
- Napa Valley: 400 workers in excess of jobs
during the harvest and pruning seasons.

ORGANIZING A UNION

I shall cite three examples when our union has directly experienced our members being displaced by either H-2's or another workforce.

In 1978, when unemployment in the Texas Rio Grande Valley was the highest in the State, Mexican H-2 workers were hired by the Griffin & Brand Company in Presidio, Texas. The UFW had submitted 1,700 names, addresses and telephone numbers of local workers who wished to pick crops in the Presidio area. Not one of the 1,700 applicants was hired by the company.

Two California cases:

Kawano vs. UFW: United Farm Workers won an election; the workers were all fired. We proceeded to file suit under the California ALRA, and won the case -- including back wages.

Uhegawa vs. UFW: In this instance, the workers were fired before the UFW had a chance to hold an election.

We contend that there is not a worker shortage, but a job shortage.

There are three main points on H-2 that are critical to the current farm labor workforce. These are:

- (1) Assuring maximum recruitment of current workforce.
- (2) A private right of action.
- (3) The current regulations be put into law.

Congressman George Miller and the Education and Labor Committee have been working very hard to assure these practices.

LEGALIZATION

We feel that the current agricultural workforce should be legalized. Certainly they have been contributing members of our society.

If there is a shortage of farm workers, as agricultural interests would lead you to believe, why aren't they screaming for legalization to the most current date possible?

Legal workers do not live in fear; they get Social Security and unemployment insurance and they are not afraid to speak up for their rights.

Many other industries have taken their trade to a captive workforce in other countries. Agricultural interests -- who cannot move the earth -- would bring their captive workforce here.



UNITED FARM WORKERS of AMERICA AFL-CIO

102 Lynnmoor Drive, Silver Spring, Maryland 20901

(301)593-7408
or leave messages at
(301)563-9016

May 2, 1983

MEMORANDUM

TO: CONCERNED MEMBERS OF CONGRESS

FROM: STEPHANIE BOWER, Legislative Representative

SUBJECT: H - 2 Temporary Worker Program,
Simpson/Mazzoli Immigration Reform & Control Act

UNEMPLOYMENT AND LAY-OFFS AMONG OUR MEMBERSHIP CLEARLY SHOWS
THAT THERE IS NO NEED FOR ANY KIND OF TEMPORARY WORKER PROGRAM.

There has, for over one hundred years been many more workers
than jobs available in agriculture in order that workers may
be kept in an exploitable position. Dr. Tim Horgan of St. Leo
College, St. Leo, Florida concludes in a study that he has
done that there are 3 to 400,000 agricultural workers available
for only 100,000 jobs annually.

Our Field Offices report the following unemployment statistics:

In November of 1982 while H-2's were being brought into Florida
from Mexico, our Avon Park field office reported 1000 unemployed
farm workers in that area while 230 of our members under contract
with the Coca-Cola Company were still laid off from the previous
season.

In Arizona, hundreds had been laid off and 170 Union Members (UFW)
were on the waiting list.

Unemployment in Texas at the time was 50 - 60% among farm workers.

CALIFORNIA FIELD OFFICES REPORTED AS OF APRIL 1983:

CALEXICO: 5000 unemployed farm workers in the area.

COACHELLA: 1500 Union members under contract laid off - Another
1000 workers in the area unemployed.

DELANO: Highest unemployment since the recession began - 1200 workers
unemployed from ranches under contract - of the 1200, 500 have
been laid off. Another 1000 workers in the area are unemployed.
Tex-Cal Land Management Co. gave notice to 1000 workers that
their services would be no longer needed and brought in
labor contractors with a history of violating the old Farm
Labor Contractor Registration Act to hire another docile
workforce.

Livingston: 750 to 800 unemployed Union Member.



Oxnard: 100 members with seniority on waiting list.

Parlier: 900 members unemployed (90% unemployment)

Salinas: Continuous list of 1300 - 1500 members on waiting list.

San Ysidro: 438 members on waiting list.

Santa Maria: 200 of 500 unemployed members. Several thousand total number in the area.

Hollister: 400 members have been laid off - 3000 unemployed farm workers in the area.

Napa Valley: 400 workers in excess of jobs during the harvest and pruning seasons.

BESIDES THE HIGH UNEMPLOYMENT IN AGRICULTURE, THERE IS ALSO HIGH UNEMPLOYMENT AMONG OTHER AMERICAN WORKERS. There are more and more other types of workers brought in either under H-1, H-2, B-1 or legally and these workers are also displacing the current workforce in this country.

Thousands of engineers and nurses are taking jobs from those here legally who are demanding a salary of \$20,000 in the case of the engineers and even less where the nurses are concerned. The employers get by with paying lower salaries to the temporaries.

In the case of an entertainer brought into Florida from Australia under the program, H-1, where temporaries are supposed to be outstanding in their field to come to the U.S., this particular person was making a mere minimum wage.

Just recently Korean workers have been brought into the country - displacing the current workforce of service employees.

We feel that this is a trend - a Union-Busting Trend -

Why else in such times of high unemployment would we even entertain the thought of bringing in hundreds of thousands of workers to do the jobs which our Union Membership is already doing?

(Attachment is held in the committee files.)

**STATEMENT SUBMITTED BY THE
AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS
TO THE HOUSE AGRICULTURE COMMITTEE
ON H.R. 1510, THE IMMIGRATION AND REFORM ACT OF 1983**

June 15, 1983

The AFL-CIO has long urged Congress to address the problem of the flow of undocumented workers across U.S. borders. Undocumented workers are often prey to exploitation by unscrupulous employers, and the substandard wages and working conditions which they are powerless to resist have a depressing effect on wages and working conditions of U.S. workers. A legislative prohibition on the employment of undocumented workers - backed by substantial and workable sanctions to deter employers from violating that prohibition - is the single most important deterrent to illegal immigration.

The AFL-CIO views legislative reform in this area as a package which must contain strict and enforceable sanctions and other essential provisions as well: it must also contain a secure identification system which establishes those legally entitled to employment and may be used for that purpose alone, provisions to ensure against discrimination against citizens and legal resident aliens because they are "foreign appearing", a generous amnesty for those already in this country albeit in undocumented status, and tight controls on any H-2 temporary foreign worker program. In anticipation of congressional attention to the problem this year, the AFL-CIO Executive Council, in February, called for:

"[congressional action] consistent with the nation's compassionate and humane traditions and that safeguards the welfare of American citizens and American workers"

A solution to the problem of illegal immigration can only be accomplished by taking into consideration the legitimate concerns of all affected elements of our population including, of course, the agriculture community, its employers and workers. We know that there are fears in some sectors of the agriculture community that an effective prohibition on the hiring of undocumented workers will deprive agricultural producers of their workforce. Specifically, we are aware of the contention by agricultural employers and their

advocates in the Congress that those employers, having become dependent upon a ready supply of undocumented workers, cannot now be deprived of that source of labor without being provided an alternative in the form of unlimited numbers of H-2 temporary workers.

The AFL-CIO continues to oppose any such program for it would inevitably undercut the wages and working conditions of American workers. Such "bracero" or "guestworker" programs are contrary to the interests of American workers, whatever label may be given them. A bracero program was tried and found wanting and was rejected by Congress in 1964.

We further cannot comprehend the need for large numbers of temporary foreign workers at a time of unprecedented unemployment. We know first hand, we read in the daily press, and we see on television, great numbers of persons pleading for a job, any job. Even if there is not a perfect match between the jobless and the agricultural jobs that we are told will go unfilled, we believe the burden must be on those making the anticipatory hardship claim to provide evidence, not simply argument.

It should also be noted by this committee that the legalization program in H.R. 1510 will result in numbers of workers attaining the legal right to work in the U.S. Many of these workers will have had experience working in American agriculture and will be available to U.S. agriculture employers. This fact, plus a carefully drawn and time-limited transition program are, in our view, more than sufficient to meet the workforce needs of the agricultural sector in the early years of the new immigration policies embodied in H.R. 1510. For the long-range, however, the AFL-CIO continues to support the recommendations of the Select Commission on Immigration and Refugee Policy that the government, employers, and unions should cooperate to end dependence of any industry on a constant supply of temporary foreign workers.

One of the highest priorities of the AFL-CIO, if Immigration Reform legislation is to warrant our support, is the protection of the working conditions of all workers, U.S. citizen, legal resident alien, newly legalized alien, temporary non-immigrant and transition workers. We are not satisfied with the labor protections contained in H.R. 1510 as reported by the

House Judiciary Committee; but we do commend the work done on this subject last year by the House Education and Labor Committee. We wish to underline the importance of the protections contained in that Committee's proposals for both American workers, who must have first claim on jobs on these shores, and those foreign workers here temporarily as H-2's or transition workers to fill positions for which American workers are not available. These include a limit on the length of time of certification of such workers; the necessity of certification by the Department of Labor if such workers are to be used; the requirement for nationwide recruitment of U.S. workers before the certification of temporary foreign workers may be made; the lack of sufficient "qualified workers available" to perform the work as the certification test; and provision for decent living and working conditions in the fields.

There is another fear raised by the prospect of passage of H.R. 1510 which is of as much concern to the AFL-CIO as it is to the Hispanic community of this country. That is the fear deeply held by many that the enactment of sanctions will lead to additional employment discrimination against individuals on the basis of their national origin or status as aliens. This fear must not be ignored. There need to be provisions in any final legislative product to forbid such discrimination and to provide redress for a person who has nonetheless been discriminatorily denied employment. We in the AFL-CIO believe that there should be parallel sets of enforcement devices containing public and private causes of action and remedies adequate to deter those who would hire undocumented workers and those who would discriminate against documented workers.

And finally I would again observe that the AFL-CIO supports the most generous, practical legalization of the status of those undocumented persons who are now in our midst, functioning as law-abiding and contributing residents of their communities.



Stephen G. Cory
Chairman

John A. Bennett
Executive Secretary

Colin W. Bell
Executive Secretary Emeritus

American Friends Service Committee

1501 Cherry Street, Philadelphia, Pennsylvania 19102 • Phone (215) 241-7000

June 10, 1983

TO: Aurora Camacho de Schmidt (Director, AFSC Mexico-U.S. Border Program)
Domingo Gonzalez (AFSC National Representative for Farm Labor and Rural Affairs)

FROM: Mary W. Norris (AFSC National Community Relations Committee) *Mary Norris*

SUBJECT: The H-2 Guestworker Program: expansion and changes in its regulations through provisions in the Simpson-Mazzoli immigration bill

As you know, I have just returned from a trip through South Florida during which I talked with farmworkers, their advocates, church people, and others about what they see as the implications of the Simpson-Mazzoli immigration bill. Most people there think the bill will have a devastating impact. They are particularly concerned about the legalization provisions and about changes in the H-2 Guestworker Program (and its links to the TAP, Transitional Agricultural Program, created by the bill).

Let me outline here some of the elements of that concern, including some financial implications, and mention some of the non-agricultural constituencies who I think might share the concern if they weigh thoroughly the implications of the bill.

Legalization

There seems to be little question that relatively few undocumented workers will be legalized under present provisions of the bill even by the figures given by the Immigration and Naturalization Service (INS). I attended a meeting in Miami with Craig Raynsford, from the Office of General Counsel of INS in Washington. He said that INS estimates that there are three to six million illegal aliens in the country now, of whom fewer than two million will qualify for legalization as it is now written. (The figure may prove to be significantly lower, since Raynsford also said that INS will continue its present policy of mass arrests and deportations, which have frightened many people who will qualify for legalization.)

The general sense in Florida is that most of the undocumented work force will not qualify for legalization (which will thus solve few problems), yet the myth of widespread legalization is being used to justify employer sanctions and dramatic expansion of the H-2 Program, along with removal of the few protections that the present H-2 statute and regulations contain.

The H-2 Guestworker Program: expansion

Many people were perplexed by the relatively small outcry against the H-2 provisions of the bill, which they see as by far the worst aspect of the proposed legislation, and something that should be changed at almost any cost. They have expected concern from a range of constituencies, in terms of both staggering financial implications and impact on specific groups.

An Affirmative Action Employer

The American Friends Service Committee's interest in immigration policy is based on a long standing concern for the plight of the most vulnerable sectors of the U.S. society, including migrant farmworkers, Chicanos and Blacks, and for immigrants themselves. The Committee's experience with such vulnerable communities goes back to the early fifties, and its work has consisted of a variety of short and long term programs and involves continuing relationships with a range of community organizations.

In 1978 the Committee launched a bi-national Mexico-U.S. Border Program with its counterpart in Mexico, the Comité de Servicio de los Amigos. This latest effort has added Mexican perspectives to the Committee's work on immigration issues and has provided us with direct contact with colleagues and communities in Mexico.

Ethical considerations on the H-2 Program

As an expression of Quaker faith and practice, the AFSC bases its considerations on the most profound respect for the dignity of every human being. In this light any kind of temporary workers program appears to be wrong, since it is based on the assumption that a country can take advantage of the productivity of individual workers without taking responsibility for the other dimensions of his or her person, especially the social dimensions: family, language, culture, the opportunity to seek a future in the land where one is at work. The pain of migration without family and community is taken as the price for survival on the side of the worker, while it represents a net opportunity to profit for the growers. At the national level, if it is true that cheap labor produces cheap food (a questionable assumption), then the country that receives temporary workers benefits as a whole from the unfortunate conditions prevailing in the sending country. Every nation which sends out temporary labor is losing opportunities for change in each person who leaves at the peak of his or her productivity. If it is true that the United States needs foreign workers, then it must admit full immigrants who should be integrated as equals in this society.

On Temporary Workers Programs

Both the Select Commission for Immigration and Refugee Policy and the original version of the Simpson/Mazzoli Immigration Reform and Control Act of 1982 rejected the provision for a temporary workers program and framed their proposed reforms on the assumption that illegal immigration had to be controlled in order to protect jobs in the United States for citizens and legal residents. This impetus, plus many testimonies and research papers on the European experience with guest workers and our own Bracero contracts showed that a small or large scale temporary workers program was the wrong solution. In 1964 the Board of Directors of the AFSC expressed itself on the Bracero Program:

In spite of legislative safeguards for its use the program has exploited both Mexican and domestic farmworkers. It has had an adverse effect on the recruitment, training and wages of domestic farmworkers. Furthermore, reliance on imported contract labor has contributed to

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the problems of agriculture, and has deferred the necessary solution to this problems consistent with the dignity of all individuals engaged in agriculture.

Since all proposals for immigration reform have had employer sanctions provisions as the central piece, they were perceived as unpalatable to business in general. In leaving the door open for a wider H-2 program, the Select Commission and the Simpson/Mazzoli bills attempted to sugarcoat the new legislation, we believe, without intending to create a large scale temporary workers program through H-2. If SCIRP wanted to see a streamlined application process for employers, they also called for measures which would protect U.S. labor and very especially the H-2 workers. The Commission says in its final report:

The Commission is of the view that changes in the H-2 program should address the concerns of those who fear that a temporary worker program will automatically result in an underclass of workers. By guaranteeing H-2 workers the same benefits as U.S. workers, the United States can ensure that its temporary worker program does not degenerate, as did the Bracero Program, into a program that exploits workers.

The most important provisions of the proposed legislation are supported by arguments related to the protection of the U.S. labor market. The coexistence of a provision that will allow for the easy importation of foreign workers in large numbers is inconsistent. Powerful interests are at work when a bill can be bent to fit the needs of a particular sector in disregard of the national interest and the interest of workers, in the United States and abroad.

The benefit to the country of origin

An argument often heard in support of the creation of a large scale H-2 program is that it benefits the country of origin by providing foreign exchange, and by dealing with the severe poverty and unemployment often found in the sending countries. We believe that the solutions to the enormous problems of the Caribbean and Latin American nations are to be found elsewhere. At best the migration of young H-2 workers provides a palliative to their societies.

There is no evidence that temporary migration has been able to change the lot of rural communities in Mexico. In studying the sugar cane H-2 program in Florida, researchers Wood and McCoy conclude:

After statistically controlling for key variables (age, education, island), the results indicate that repeated participation in the H-2 labor program does not appear to lead to the accumulation of productive resources (as measured by land and other assets) by the individuals involved.

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Clearly the cheap purchase of a highly skilled, highly motivated labor force through the use of H-2 is not designed to be a form of foreign aid.

Mexico has not been an H-2 visa user until very recently. This fact is significant because Mexicans are the largest group to suffer deportations from the United States and naturally will be affected more than any other group by the enforcement measures of the new legislation. We may have here another instance of making the legislation palatable to a particular group.

In contrast with President Reagan's proposal for a pilot temporary worker program with Mexico, consisting of no more than 50,000 visas per year, the H-2 provisions as amended are open to any country but do not specify what system will be used to allocate H-2 jobs among applicants from different countries. Here there is great potential for conflict.

Dependence of employers on H-2: a sign of an ailing industry

The demise of the Bracero Program with Mexico in 1964 coincided with the organization of farmworkers in California, which was later to spread to other areas of the Southwest. In spite of the difficulties faced by unions in a sector where the labor pool is enormous, these organizations have been able to offer some degree of protection to farmworkers. In the East Coast, by contrast, it has been much more difficult for farmworker organizations to succeed. What is the role of the H-2 program in this?

Unions offer the hope of improving working conditions. The H-2 program preserves the present dismal situation. Filmed and written documentaries show that the lives of U.S. migrant farmworkers are extremely hard. The working and living conditions of all farmworkers in the East are below standards for any industry in the United States. Child labor and peonage, long eradicated in most sectors and regions, are still present among the conditions faced by the most disadvantaged segment of the national labor force: the migrant farmworkers.

The artificial protection to some industries, in import quotas and special labor programs, may be keeping us as a nation from facing the realities of the lives of the farmworker migrant stream in the Eastern United States. Is H-2 in effect a subsidy to industries whose labor relations should be regularized in a free market?

The shortage of farmworkers: a myth

It is estimated that there are five workers for every farm labor job in Florida at this point. Under the present H-2 provisions legal action after legal action has challenged the Labor Department certification for H-2s. We know from our own experience that in Belle Glade, at the hub of the sugar cane industry in Florida there are some 5,000 Haitian workers who are unemployed, and just as many who are U.S. citizens and legal residents, mostly Blacks. A legal action may be on its way to challenge the importation

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of hundreds of Mexican workers under the H-2 system for the tobacco harvest in Virginia, while a group of U.S. citizens from Texas was turned down by the employer.

Amendments that suppress the requirement to recruit widely and to offer training will surely discriminate against domestic workers. It is also imperative that farmworker organizations and legal agencies retain the capacity to challenge a labor certification when it is evident that there were enough workers in the United States to carry out a job.

Lack of protection for the H-2 workers and U.S. labor

Neither labor pool is protected under the provisions of the H-2 program as amended in both houses. The competition of docile, hardworking foreign workers against domestic ones is plainly unfair under present conditions. The proposed legislation widens the inability of the U.S. worker to compete.

The H-2 workers in the sugar industry suffer what is possibly the highest incidence of job-related injuries of any labor sector in the United States including mining: out of a group of 8,500 H-2 workers in the sugar cane cutting season, 3,500 had injuries important enough to require medical attention in 1982. According to a life insurance agent in one multinational sugar cane operation in Florida, seven people died last year in job-related incidents. Yet there are no records of workmen's compensation claims for these workers. Injured workers go back home, never to be seen again.

The arguments used in support of legalization and employer sanctions point to the need to take the undocumented labor force out of clandestine conditions, where labor laws can protect the workers for their sake and for the sake of a healthy society in which human life is valuable and a person has rights. Yet H-2 is a program in which we institutionalize lack of protection and the potential for abuse.

The Transitional Agricultural Program - (TAP)

Congressmen Lungren and Mazzoli's amendment providing for the creation of a TAP is one more instance of the sale of a large scale labor program under the table. The system is designed to help employers who are dependent on undocumented workers, but not to deal with the workers' needs. Every advantage is once again on the side of the grower.

We are particularly concerned that this program will shortchange the legalization provision, if there is such a program in the new law. But most of all the AFSC joins other groups in voicing a great concern for the fact that such a provision will open the entire agricultural field to H-2s, all over the country. If there is such a thing as an addiction to undocumented workers, this will also be true in the case of temporary labor. At the present time the H-2 in agriculture is confined to certain sectors. The TAP is designed to take away those limits.

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Conclusions

We believe that the proposed expansion of the H-2 program

- Is unethical.
- Is inconsistent with the desire of congress to protect jobs.
- Is identical to the temporary workers program that was rejected unanimously by the Select Commission and by most members of Congress.
- Will not benefit the country of origin of the workers.
- Has the potential to create international conflict.
- Is an artificial protection for an industry that cannot face the real costs of its production and its obligations to negotiate fairly with workers.
- Will have a regressive impact in the capacity of the labor force to organize.
- Will not protect the foreign workers adequately.

There is no basis for the expansion and perpetuation of a system that protects a powerful economic sector at a great human cost.

For more information call:

Aurora Casacho de Schmidt (215) 241-7132
Domingo Gonzalez (215) 241-7133

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People in Florida believe that the new H-2 Program created by the immigration bill will lead to serious displacement of U.S. farmworkers and rural poor people that, as one person said, "will change the face of rural poverty as we know it in this country". Another called it "the worst thing that has happened to farmworkers in the U.S. since the Bracero Program, and something that will take decades to undo". The results of the displacement will, it is believed, will have an impact far beyond the agricultural sector of the economy.

A few key points about the impact of the proposed H-2 Program:

1. There is a significant surplus of farm labor already. In Florida, for example, most farmworkers can get only two or three days of work a week. One attorney estimated that there are three farmworkers for each available job during most of the season.

At present, through hard work, H-2 visa allotment has been held under 35,000 each year. Reasonable estimates are that, under the new H-2 provisions, a minimum of 300,000 to half a million foreign workers will be admitted by H-2 visa to add to that overcrowded work force. H-2 workers will have contracted in advance for many of those jobs. Most of the people displaced will be U.S. citizens or legal residents; many will not be farmworkers, but persons displaced by economic depression in their communities; most will be poor white, Black, or Chicano.

2. The financial burden of the displacement will be enormous. It will include:

- a. Direct costs: unemployment welfare food stamps medical and/or other services for each displaced worker and often for family members (Most displaced workers will be legally entitled to social program benefits.)
- b. Tax revenue losses: federal state and local. H-2 workers are not subject to U.S. income taxes.
- c. Indirect costs: the impact of escalating displacement/unemployment on rural businesses and economies (many already precarious) and on urban areas, as buying power lessens and as displaced workers migrate to urban areas.

State and local governments will bear most of that burden. Since they have spoken out strongly on immigration costs and funding, I think their comparative silence on H-2 provisions may indicate that they haven't thought this one through. I raised the question of these costs at an immigration forum (sponsored by the Miami Bar) recently the two (state and local) government officials there were taken aback to hear of the possible costs and then spoke strongly about the need to prevent them.

3. New migrant streams of workers will be created, as H-2 contracts turn the attention of an increasing number of Third World individuals and governments toward the U.S. as a primary source of agricultural jobs.

4. There will be critical setbacks for labor, with direct impact on agricultural workers and indirect impact on workers in many other industries, including:

- Direct, one-on-one displacement of farmworkers;
- Further debasement of agricultural wages and working conditions. The

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advantages for growers of an H-2 work force are that the workers: (a) cost less (lower wages, no unemployment costs, no social security); (b) are often required to work under conditions that are unacceptable to U.S. workers (safety, health, wage, and other factors); and (c) are effectively prevented from organizing to protest working conditions (can be deported immediately by the grower when problems of any kind arise).

(Undocumented workers can also be deported if they protest working conditions. Under immigration law, however, they have limited rights to due process, while H-2 workers are simply sent home immediately at a point determined by the grower they work for. In addition, once deported under an H-2 contract, an H-2 worker is prevented by a name-listing process from obtaining an H-2 job in this country in future—a factor that will become increasingly significant as more and more jobs in the U.S. are filled only through H-2 guestworker contracts.)

- The institutionalization of a government-sponsored, potentially effective, scab labor force, immediately available to growers who fire U.S. workers for work protests, and subject to instant deportation and blacklisting if they refuse to work as strike breakers.
- The spillover effects of further depression of rural economies (fewer jobs, higher costs, fewer consumers, etc.) and increased competition for scarce urban jobs as economic depression drives rural workers to cities to look for work.

It has been suggested that some of organized labor has accepted the proposed H-2 changes as a price for obtaining employer sanctions through the immigration bill. To the degree that that might be true, I wonder if labor has seriously considered the potential effects of H-2 expansion and judged that sanctions are worth this heavy price.

5. Displacement of the rural poor will have a disproportionate impact on Black and Chicano communities and people, since (a) in many rural areas they are the majority of the poor who will be displaced, and (b) in cities they will be vulnerable to the competition of newly urban workers driven to the cities for jobs. Puerto Rican communities will be affected in a similar way; in addition they will face special problems because of the ways in which H-2 contract labor displaces Puerto Rican contract farmworkers, closing off an avenue for jobs that has been significant (although with its own drawbacks).

6. There are many international complications in the development of more sources of foreign contract workers. One such is the fact that a major aspect of U.S. immigration and deportation policy will be set by the practices of individual growers rather than by the government, and will not be subject to public scrutiny despite its potential for serious disruption of relations with a sending country. At the same time, the economies of sending countries will become more dependent on and interwoven with the U.S. and its economy (not always a benefit for either country) through de facto practice rather than as a policy decision made in the light of international policy considerations. This will increase the dependence of both parties on external resources that they do not control.

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7. The implications for urban communities have been touched on in some of the items above. There are a number of urban groups and constituencies that will feel the impact and should now be concerned.

A number of agricultural interests are supporting H-2 expansion, which will bring clear financial and other benefits to them. It is reasonable to argue that agriculture is of such importance to this country that subsidies to it are in the national interest. Even if that is the case, however, why not subsidize agriculture through the traditional approach of commodity price stabilization, or develop other mechanisms along those lines, rather than by reducing wages and allowing poor working conditions that, while reducing costs, are not acceptable (fiscally or in terms of human cost) in modern times?

The H-2 Guestworker Program: statutory and regulatory changes proposed:

The Simpson-Mazzoli bill includes, at present, major changes in the statutory base of the H-2 Program, which will require development of new regulations. The overall effect is to gut protections for both U.S. jobs/workers and H-2 workers. There seems to be no reasonable argument to support that (particularly at a time when U.S. workers desperately need jobs), even if judged from the viewpoint of someone who favors H-2 expansion. From the beginning, Congress made clear that H-2 visas should not be granted if U.S. jobs, wages, or working conditions would be adversely affected. That goal still seems to be overriding in the national interest, for an assortment of reasons (with some of which we may not agree).

The regulations now in place, developed to ensure safeguards for U.S. workers, have been routinely violated, and enforcement efforts have often been minimal. The safeguards do exist, however, and are potentially enforceable through various forms of public pressure. To remove them as part of a "streamlining" effort serves the interests of only the most unreasonable growers, at great expense to U.S. workers in agriculture and in other industries.

There already exist some good analyses of the proposed changes in the bill that will remove job and worker protections, so I won't add the specific points here. One example seems particularly striking: changing the recruitment requirement so that growers need to recruit only regionally rather than nationally. Since farmworkers migrate from coast to coast and south to north (depending on weather and temperature differences), removing the national recruitment requirement will make the recruitment process almost impossible to affect on behalf of domestic workers. Many of the other proposed changes are as serious.

I'll close by echoing the words of one person I talked with in Florida: "They say we have to compromise on this bill. I don't think any compromise, even to get legalization, is worth it if it lets in more H-2 workers."

STATEMENT OF CAROLE L. BAKER, EXECUTIVE DIRECTOR OF ZERO POPULATION GROWTH, INC.

Zero Population Growth, Inc. (ZPG) is a non-profit membership organization which was founded fifteen years ago. Our objective is to mobilize broad public support for population stabilization in the United States and worldwide, as a requisite for all human beings to attain a decent quality of life. (Stabilization is the attainment of a balance in which births plus immigration equal deaths plus emigration.) Our interest in immigration policy relates to the role that immigration plays in U.S. population growth. Current estimates indicate that 40 to 50 percent of our nation's annual growth is attributable to immigrants.

Our nation's environmental and resource problems--such as the increasing loss of topsoil and prime farmland; the proliferation of toxic wastes; water and air pollution; acid rain; habitat destruction and species extinction; deforestation and desertification with resulting climatic changes--are all caused at least in part by population growth. It is sobering to realize that, although Americans comprise only five percent of the world's population, per capita they use eleven times the world average of energy, six times the steel and four times the grain.

As the world's fourth most populous nation, the United States expanded its population in 1980 by 2.3 million people, not including illegal immigrants. At the 1980 growth rate of 1.02 percent, the U.S.

experienced the second greatest population growth of any developed nation. We Americans now number over 232 million. For every three of us today, there will be four by the year 2000. At this rate of growth, the U.S. is adding another California to its population each decade, and a new Washington, D.C. every year. In fact, in less than three years since April 1980, six million more people have joined our population, which is the equivalent of adding another state to the union.

Natural increase (the excess of births over deaths) and net immigration (immigration minus emigration) account for that 2.3 million increase. Although each American woman is bearing, on the average, fewer children than women did in the past, the total number of babies born annually is still on the rise. The women born during the "baby boom" generation, who are now in or are entering their childbearing years, contribute substantially: in 1980, 3.6 million babies were born--an increase of 4% over the year before. The 1980 U.S. fertility rate reached 1.875, the highest since 1974. Demographers project a continuing increase in the numbers of babies born each year; reaching a level of four million annually before tapering off towards the end of this decade.

If current fertility levels hold, by 2030 all growth in population will result from immigration. The flow of immigrants to the U.S. is approaching record levels. Immigration rose dramatically in the

decade of the '70's and may once again climb as high as in the first decade of this century, when about nine million people entered the country. High levels are expected to continue and even to accelerate, due in large part to population growth and consequent troubles in the source countries. According to the "push-pull" theory, immigrants will be pushed from their homelands by overpopulation, resource depletion, unemployment and political instability, and will be pulled into this country by job prospects and an ever-widening divergence in the per capita incomes of the United States and the source countries.

The present U.S. population has tripled since the turn of the century. Today, U.S. local governments are experiencing grave difficulties in trying to cope with the sudden influx of immigrants, who intensify competition for unskilled jobs, crowd into low-cost housing and place unplanned-for demands on educational and welfare programs. It is just as necessary to recognize that the lack of planning leads to inequities and other hardships for the immigrants. Clearly, industrialized countries are not immune to the impacts of increased population. Resource constraints, caused in part by population growth, have contributed significantly to economic inflation, stagnation, recession and depression. The Japanese, for example, have experienced a rapid rise in per capita income, approaching Western European levels, and yet they cannot attain the Western European quality of life because of overcrowding, lack of living space and a scarcity of natural recreation areas.

The concept that the problems of population growth, resource depletion and environmental degradation are something we must deal with solely in the future is a myth. These problems are upon us. The 1980 National Agricultural Lands Study found that population growth and shifts are major factors in the annual loss of three million acres of U.S. agricultural land. Furthermore, U.S. farmers attracted by the world grain market have adopted practices that resulted in the erosion of four to five billion tons of topsoil in 1982 alone. At the same time that these losses have been occurring, the demand for United States agricultural products is rising steadily due to worldwide population growth and increased per capita consumption. Demand for U.S. farm products may increase by 85% by the end of the century. For instance, in 1980, the world's population grew at a rate six times that of the world's food production for the same year. This means that, although food stocks increased, less food is available per capita, at a time when over 600 million human beings are severely malnourished. In the meantime, parts of our nation are running out of safe and sufficient ground water supplies, soil erosion is worsening, and desertification is ruining several regions of this country.

Population stabilization is one of the necessary tools to address these problems and to assure better living conditions for all people. Stabilizing the population and reaching zero population growth will help us solve the many crucial and complex economic, resource, and political problems confronting us. It was former Secretary of Defense

and President of the World Bank, Robert S. McNamara, who cited overpopulation as the gravest threat to human life, next to nuclear war. The 1970-72 Presidential Population Commission concluded, "... we have found no convincing argument for continued national population growth." In 1974, the then Governor of California, Ronald Reagan, stated, "Our country has a special obligation to work toward the stabilization of our own population so as to credibly lead other parts of the world toward population stabilization." Furthermore, the industrialized countries, recently concluding the Ottawa Summit on global economic conditions, agreed in their Summit Declaration that they "are deeply concerned about the implications of world population growth. . .and will place greater emphasis on international efforts in these areas."

In spite of such pronouncements, the U.S. still has no national population policy and no specific demographic goals, and, indeed, no overall program to help ease population pressures in other countries. It is pertinent to note that next year marks the tenth anniversary of the United Nations World Population Conference in Bucharest. At the 1974 conference, the United States joined 136 other countries in endorsing a World Population Plan of Action. One recommendation of the Plan is that,

"Population measures and programmes should be integrated into comprehensive social and economic plans and programmes and this integration should be reflected in the goals, instrumentalities and organizations for planning within the countries. In general, it is suggested that a unit

dealing with population aspects be created and placed at a high level of the national administrative structure and that such a unit be staffed with qualified persons from the relevant disciplines."

Although our nation is preparing to participate in the 1984 conference, we still have no articulated policy for national population growth and change.

If we are to deal with U.S. immigration policy over the long term as well as in the short run, we must address the circumstances that cause people to migrate from their native lands. Our nation's immigration goals and limits should be linked to a strong, comprehensive, cooperative international program in which more U.S. financial and technical assistance is directed to help other countries carry out family planning programs, create jobs and promote economic opportunities and stability, and defuse political tension and avert military conflict.

Efforts such as these could lead to a notable drop in the numbers of immigrants entering the U.S. However, a serious commitment needs to be made, to alter the fact that, among the developed nations, only Austria and Italy provide a smaller share of their GNP for foreign aid than the United States.

Meanwhile, there is legislation at hand to address today's problems. For the most part, ZPG supported the original version of H.R. 1510. Our comments specific to the bill as it has been amended are as follows:

- o Immigration should be addressed as part of an overall population policy: There is sufficient precedent to conclude that the Congress would agree that population stabilization is in the national interest. Therefore, we encourage the Committee to add language to H.R. 1510, stating that an effective immigration policy is an essential element in achieving population stabilization.
- o We support an annual cap of no more than 425,000 legal immigration. We strongly recommend that the Committee restore such a provision to the bill. Considering that there could be added some 75,000 refugees, and not considering any illegal immigrants, annual immigration would then total about 500,000. To illustrate the numerical results of admitting that same total every year, we have appended as Exhibit A a table of population projections for the United States for the years 2000 through 2080. The projections, which have been provided by the Population Reference Bureau, contrast the annual net immigration totals of 0, 0.5, 1.0 and 1.5 million people.

It can be seen that, even with no immigration at all, population would continue to rise until about 2020, when it would reach 266.5 million and then begin its downward trend toward stabilization. At 0.5, population would peak in 2040, at 294.7 million. With one million immigrants, which is today's estimated total (including

illegal aliens), there is no peak in sight. In 2080, the U.S. population will have reached 340.1 million and will still be rising. While there is no agreed-upon desirable population level for stabilization, some believe that the U.S. has already surpassed a sustainable level. Because our current numbers are straining available resources, we need to reach stabilization at the lowest possible level, while a range of options still remains.

- o We support strict employer sanctions and a system for worker verification. The employer sanctions provision of the original H.R. 1510 would have effectively discouraged undocumented aliens from entering the U.S. in search of jobs; ZPG favored this. Now the same section of the bill has been greatly weakened, so that employers would be penalized only after being caught twice for having hired illegal immigrants. Because the present language offers little disincentive, we urge the Committee to restore the original sanctions provision.

To be effective, the systems for strict sanctions and for worker verification should be integrated with each other and must have sufficient funding and resources, since failures of sanctions programs in other countries resulted principally from lack of resources and political commitment. In addition, the civil rights of legal immigrants and citizens alike should be protected, and discrimination and any abuse of the worker's eligibility system

should be subject to substantial penalties. This means, in part, that the sanctions program must be accompanied by appropriate oversight, reporting and review. We believe a system can be devised that would significantly minimize the potential for discrimination.

- o We support granting permanent resident status to those aliens who illegally entered the United States before January 1, 1982--but only if strict employer sanctions are restored to the bill, and if adequate funding for strong border enforcement is authorized for the Immigration and Naturalization Service.

Certainly, we feel that it is wiser and more humane to integrate the undocumented aliens into our society than even to consider mass deportation. We believe, however, that legalization must be a one-time occurrence, and must never again become a national necessity. To assure this, future illegal immigration needs to be systematically thwarted by means of aggressive programs for employer sanctions and border enforcement. In addition, as noted above, the root causes of immigration must be addressed through the concerted action of the developed nations. Relief of human suffering; insistence on social justice; provision of technical and monetary assistance (a) to create labor-intensive economies so that local and world market needs can be met and so that adequate diets, housing, and medical care can be made more widely

available, and, (b) to encourage family planning for future population stability--these measures together will work to reduce political unrest and to lessen the flows of immigrants and refugees across the face of this planet. As the one nation that takes in more than twice as many legal immigrants as all the other developed countries combined, the United States should take the lead in organizing such an international effort.

- o We support the provision of adequate funding to enable the Immigration and Naturalization Service to implement the very reforms provided in this legislation. This must be a crucial aspect of any comprehensive legislation, if it is to be effective. The INS has been chronically under-funded and under-staffed. More training, more personnel and a change-over to computerization are very much needed. If funding for the INS were not substantially increased, the agency might be forced to take existing staff away from routine work and to reassign them to the new program, with no assurance that implementation would be effective.
- o We oppose any expansion of the current H-2 guest worker program. It appears that employers could sidestep sanctions by hiring temporary foreign labor through the H-2 program. Such a practice would undermine the employer sanctions system. Furthermore, as long as U.S. unemployment remains high, citizens and other legal residents of this nation should be given every possible job opportunity. Employers must be given incentives to hire these workers instead of seeking labor from other countries.

In conclusion, it is ZPG's belief that continued immigration is a benefit to this country, bringing us cultural diversity and unique strengths. We believe that a balance can be struck that provides for both immigration and limits to growth, and we urge prompt passage of comprehensive legislation to reform our nation's immigration policy.

Exhibit A

PROJECTED

TOTAL U.S. POPULATION, YEARS 2000 - 2080,
BY ANNUAL NET IMMIGRATION (in millions) (*)

Annual Net Immigration (in millions)	Years				
	2000	2020	2040	2060	2080
0.0	255.9	266.5	256.4	235.9	214.9
0.5	267.4	291.5	294.7	286.6	277.0
1.0	279.1	316.9	333.8	338.2	340.1
1.5	290.9	342.4	373.0	390.0	403.4

(*) Provided by Demographic Information Services Center (DISC) of the Population Reference Bureau, 1337 Connecticut Avenue, N.W., Washington, D.C. 20036 (telephone: 202-785-4666*).

**STATEMENT BY J. E. BIRDWELL II, SECOND VICE PRESIDENT, TEXAS AND SOUTHWESTERN
CATTLE RAISERS ASSOCIATION**

SUMMARY OF TESTIMONY

Texas and Southwestern Cattle Raisers Association supports the passage of an immigration reform and control bill. We want our country to regain control of its borders. The rights, first and foremost, of our own citizens must be protected. These aliens should not be abused, but they are here illegally in violation of our laws.

TSCRA is the spokesman for the livestock industry in an area of the United States whose economy and culture are intertwined with that of Mexico. Our association recognized the contributions to U.S. food and fiber production by undocumented workers from our southern neighbors. H.R. 1510 must be written to ensure U.S. agriculture is not crippled by the termination of this relationship. We must have a workable, dependable and legal source of agricultural labor.

In that regard, we support a streamlined H-2 program, a transitional ag labor program and reconsideration of a guest worker program that accepts the give and take of border economics.

We believe immigration policy is international policy and should be addressed bilaterally by the U.S. and Mexico. If our country can help its neighbor overcome its enormous economic problems, we will have done more to stop illegal immigration than employer sanctions could ever do.

TSCRA appreciates the House Committee on Agriculture's interest in this complex issue and offers specific comments on how this legislation could and should affect the livestock industry.

Texas and Southwestern Cattle Raisers Association represents more than 14,000 livestock producers in Texas and the Southwest. TSCRA has been Texas cattle-men's spokesman for 106 years.

My name is John E. Birdwell II of Lubbock, Texas. I am a cattle rancher, cattle feeder and farmer. I am currently second vice president and chairman of the labor committee of the Texas and Southwestern Cattle Raisers Association. One hundred and six years old, the association speaks for more than 14,000 concerned cattlemen in Texas and surrounding states.

We appreciate the interest of this committee in the impact of the Immigration Reform and Control Act of 1983 on the livestock industry. It is our sincere belief passage of this legislation will have a major long-term effect on present and future generations, both domestic and foreign, as well as the livestock industry.

We support legislation that will help this country regain control of its borders. Whatever this legislation provides as tools to achieve that goal, we hope the rights, first and foremost, of our own citizens are protected. These aliens should not be abused, but they are here illegally in violation of our laws.

And, therein, lies the quandary. Is it possible to do all of these? It may be there is no such thing as a good immigration law.

However, for today, our written testimony will address only issues specifically concerning the Southwestern livestock industry. Briefly, we wish to comment on the bill's proposals for agricultural labor and employer sanctions.

H-2 Program. This program has not been used to any appreciable extent in the Southwest and certainly not in the cattle raising business. The rules and certification regulations as currently written are not workable for our industry.

We have the following recommendations on H-2 to change that:

- 0 Permit associations like ourselves to represent employers in the H-2 certification process. This has worked very well for the Western Range Association whose members have similar labor needs;

- 0 The input of the U.S. Department of Agriculture should be at all levels and equal to that of the U.S. Department of Labor. USDA understands our needs more than DOL;
- 0 The definition of ranch hand or cowboy in the certification process should be revised to reflect a practical knowledge of animal husbandry. Unskilled manual labor, domestic or otherwise, can't fill the need for livestock handling experience;
- 0 Make the program flexible because it provides a legal framework for employing labor already present in the American agricultural labor market;
- 0 Allow non-seasonal agricultural labor in the H-2 program to stay up to 11 months at a time or longer if necessary. This determination should be the responsibility of the Commissioner of the Immigration and Naturalization Service;
- 0 Reduce the filing time for requests for certification to no more than fifty (50) days prior to date of need;
- 0 Require the Department of Labor to notify an employer in writing, within seven (7) days of the date of filing, whether an application for certification to use H-2 workers meets the standards;
- 0 The local labor market, for certification purposes, should mean roughly the area from which domestic workers can and would be willing to commute on a daily basis;
- 0 Employers should not have to advance transportation costs to inbound domestic workers even if it's the prevailing practice in the area of employment. There's no practical way for employers to assure that workers accepting inbound transportation advances will ever report to work or produce enough to repay the advance;

- 0 Housing and utilities should be provided at reasonable cost and that cost should be withheld at a mutually agreed scale and time period so that the employer can recoup his costs;
- 0 Employers should be permitted to recover the full reasonable cost of meals according to current standards of the Employment Standards Administration rather than those in the certification regulations;
- 0 Employers shouldn't have to keep a domestic worker of unacceptably low productivity beyond a reasonable time;
- 0 Adequate producer representation should be provided on the advisory committee that will consult with the Mexican government and advise the Attorney General regarding the H-2 program.

The H-2 program should work hand-in-hand with the proposed transitional agricultural labor program. We support the latter because it will permit, hopefully, a smooth phase-out of undocumented workers at the same time the non-immigrant H-2 program is changing to provide for any shortfalls in agricultural labor needs.

Employer Sanctions. Our Association is not against employer sanctions if targeted against employers who make a habit of hiring illegal aliens. However, we oppose criminal penalties because we don't think it is a crime punishable by imprisonment to give another person a paying job whatever his race, sex, age or national origin.

Agricultural employers will not hire or want to hire illegal aliens if this legislation can guarantee agriculture a workable, dependable and legal source of labor.

But, if sanctions are to be imposed, we ask that burdensome paperwork requirements be deleted for employers of four or less employees. Small businesses, like family farms and ranches, don't need the added expense and problems of this requirement.

Actually, we don't believe that employer sanctions, even with greater enforcement along the borders, will stem the tide of illegal immigration. We think that immigration has increased in recent months despite record-high U.S. unemployment levels because there is a growing differential between employment opportunities and income levels in Mexico and the U.S. Until the "push" factors in other countries are changed, they will continue to be more powerful than the deletion of "pull" factors like employment. If we can help our southern neighbors with their enormous economic problems, then we will have done much to solve our immigration problems.

In summary, we encourage the House Agriculture Committee to seek further study on the long-term impact of international migration upon the U.S. and of ways the U.S. can meet its future agricultural labor needs with domestic and guest workers, if necessary.

Thank you.

END

for the rec
 Robert W. Hukari
 Hood River Grower Shipper Assn.
 4665 Kenwood Drive
 Hood River, Ore. 97031

The Honorable E. de la Garza
 Chairman, House Agriculture Committee
 1301 Longworth House Office Building
 Washington, D.C. 20515

Statement on the Immigration Reform Control Act H.R. 1510

I am a producer of apples, cherries, and pears in Hood River, Oregon, and am writing on behalf of some 400 fellow growers and shippers of tree fruits from the Mid-Columbia region of Oregon and Washington states.

We are in support of Agriculture Committee amendments to H.R. 1510 that would provide a more flexible program for securing foreign seasonal agricultural workers. We are convinced that section 211 (H-2) program as currently written into H.R. 1510 is much too cumbersome and restrictive to respond to the needs of agricultural producers and temporary foreign seasonal workers in short season labor intensive employment situations of extremely perishable crops.

The H-2 concept doesn't fit because of the rigid procedures; application for certification long before need can be accurately determined; recruiting of domestic workers; employer-employee written work contracts; and, very importantly, restriction of foreign workers ability to move among employers.

The H-2 program has worked, although not without some severe problems, in the eastern United States with limited numbers of off-shore workers. We believe that the needs of Western Agriculture demand and justify a more flexible program to accommodate the great numbers of traditional annual seasonal workers coming from Mexico for temporary employment on farms. The following provisions enacted in a complementary program would recognize the realities of who is currently so capably and efficiently doing the work in Agriculture and would regularize and provide control of seasonal temporary foreign workers:

1. Visas would be issued foreign workers to enter the U.S. for temporary period of time for agricultural labor.
2. The number of visas would be determined by employer needs, traditional requirements, and numbers of qualified domestic workers available.
3. A preference system would give priority to those experienced workers who have been doing the work.
4. Farmworkers with visas would have the right of self-determination as to what area and for whom they would work, recognizing traditional patterns of migration.
5. Workers would return to their Homeland annually upon expiration of the visa, with an incentive payment program to encourage this.
6. Foreign workers would have the same protections and guarantees as U.S. workers.
7. Employers and/or employees violating terms of the program would be excluded from future participation.

Lack of understanding about the annual seasonal patterns of movement of foreign farm workers and the vital part they play in western agricultural productions may result in enactment of controls and regulations that could jeopardize the continued economic vitality of our perishable fruit and vegetable industry. Vast numbers of experienced, capable, and caring seasonal workers are needed for critical operation periods. Lack of ability or willingness to accomplish these farm jobs by domestic workers has led to use of many undocumented, but they should not be termed immigrants because they are truly temporary, seasonal, annual workers. Only a program designed to recognize this fact can prevent tremendous chaos, upset, and economic loss to U.S. producers and ultimately, to consumers.

I thank you for the opportunity to express the concerns of tree-fruit growers from the West to this committee.

RADOSEVICH & ASSOCIATES

ATTORNEYS AT LAW

SUITE 840, INSURANCE EXCHANGE BUILDING—910 15TH STREET
DENVER, COLORADO 80202—303 573-5555

April 4, 1983

Representative Richard Cheney
222 Cannon Bldg.
Washington D.C. 20510

Dear Representative Cheney:

Thank you for the copy of your recent letter to Mr. Luis Sepulveda, Director of the Department of Labor, Denver, Colorado, regarding the sheepshearer employment problems of Sebastian Larralde and Dale Aagard. As you know from the correspondence I have provided you all efforts made by Mr. Aagard and Mr. Larralde to obtain a legal work force according to the DOL regulations have been in vain, except to demonstrate the unworkable constraints placed upon the employer. We would appreciate any action that you and your colleagues in the House and Senate take with respect to rectifying the problems for these two contractors and, similarly, any other contractors faced with the problems that Messrs. Aagard and Larralde have in employing sheepshearers.

Based upon conversations with several other contractors, it is agreed that there is a shortage of qualified American shearers in the United States. It is vital to the woolgrowers that they first have their sheep sheared at the appropriate time and, second, properly sheared so as to maximize the amount of wool shorn and minimize abuse to the animals, and, third, to be able to contract for a shearing crew at a reasonable price under non-stress conditions. I think it is important to point out what routinely happens particularly in Wyoming and the Rocky Mountain states as a result of the shortage of qualified American and alien shearers. The crews using undocumented shearers that get "busted" obviously cannot shear the growers' sheep. As a consequence the supply and demand mechanism takes over when the price per head for shearing suddenly jumps up to what the shearers know the woolgrower will be willing to pay simply to get the wool off their sheep.

At a time like we are presently experiencing with low lamb prices and low wool prices, the woolgrowers suffer tremendously and these unfavorable conditions imposed upon the woolgrower are, to whatever extent possible, passed on to the American consumer either in terms of prices for lamb and wool products or through the more subtle and long range impact of decreasing the sheep herds. Enclosed is a copy of the testimony provided before Senator Simpson's hearings a couple of years ago which documents the decline in the sheep herds over the last twenty years, partly

Representative Cheney
 April 4, 1983
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as a result of the difficulty in obtaining qualified laborers for herding the sheep, but the implication is also apparent that other factors such as shearing difficulties adversely affecting the woolgrowers enter the decision making process of whether to sell out or to stay in business. If the latter decision is made, other decisions must be made such as whether to expand, maintain, or decrease the size of their flocks.

We request that your office strongly look at suggestions in our previous correspondence to take sheepshearing out of the agricultural regulations of the H-2 requirements by removing the conditions that the employer provide transportation, housing, subsistence and tools. Shearing is truly not of the subsistence nature generating a meager wage, but rather one in which an individual can earn, during the sheepshearing season, a wage equivalent to a professional position.

Regarding the Immigration Bill pending before the House and Senate, I would like to make one suggestion with respect to visas for third and sixth preference. Under the current laws and regulations an individual who receives a labor certification and approval of permanent residence status under third or sixth preference, or comes under Schedule A for third preference and receives the permanent resident status upon taking up the position with the employer who acquired permanent residency for him, is not required to work for the employer for any length of time or be subject to revocation of the permanent residency status should he quit or be dismissed by the employer. This is one of the advantages of the temporary program for H-1, H-2 and L-1 visas. A visa holder under one of these temporary residency conditions normally is required to perform services for the employer/petitioner and only upon approval by Immigration and Naturalization Service can the alien change employers since the purpose of the H and L temporary visas and third and sixth preference permanent residency visas is to provide services to employers for jobs that cannot be filled by Americans. This purpose is defeated for permanent residency approvals because they are free of any conditions of employment to the employer/petitioner. It is suggested that in the permanent residency cases the recipient be subject to a two-year employment contract. There is precedent for imposing this condition in the receipt of permanent resident status in the cases of marriage to an American citizen.

I am not in favor of unduly restrictive legislation, but I am very much in favor of uniformity, consistency, and implementability of our laws and regulations. By making the above additions to our immigration laws, I believe we will be adding

Representative Cheney
 April 4, 1983
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levels of continuity to the objectives of these laws. I would strongly urge that a criteria for supporting any change to our present immigration laws through the enactment of the proposed legislation is the implementability of such legislation. In attempting to prepare a diagram of the legislation proposed last year, I found it very difficult to reconcile inconsistencies between the proposed laws and what was going to be left in the existing legislation. Simply to state that matters would be more specifically addressed in regulation is to ignore the responsibility of clearly defining the substantive and procedural provisions and provide the proper guidance to the regulatory agencies. From examining the proposed legislation, it is apparent that much discretion was going to be left to the adoption of appropriate regulations.

To that end, it is suggested that the new immigration law, if it be adopted, contain a provision requiring a minimum of six months field experience of all having contact with not only the government officials, but also dealing with the applicants, beneficiaries and their counsel for the main core of attorneys working on drafting regulations. Too often the price of experience is paid by those subjected to the regulations in the form of time and expense in objecting to draft form or the failing to object by the consequences of carrying out the regulations, if adopted. It has become far too costly for private individuals, both in time and money, to monitor the myriad of regulations being published and analyze and respond with hopes of having any concrete input. Responsibility for minimizing the cost to those affected by regulations in the review process is the government and one of the most effective ways of exercising the responsibility is to ensure that individuals knowledgeable and sensitive to the issue are delegated the responsibility for drafting the regulations.

Dick, I do not in any way wish to imply that you and your colleagues are not aware of the problems and procedures of legislative drafting and delegation of responsibility for implementation through regulation. I simply wish to stress how vitally important the issue of immigration is to America at this time. I believe Senator Simpson and Representative Mazzoli, you and your other colleagues should be complimented on the time and effort dedicated to hearings, discussions, evaluations and vote casting on the bills that were proposed last year and those introduced this year. Time has not been lost by not enacting the legislation last year. In fact, the importance of immigration has now been brought into the limelight and more Americans are aware of the significance that this one topic can have upon sustaining a desired quality of life and environment. I am hopeful that hearings will, again, be held around the country with an opportunity for people to appear and provide their views. I am equally hopeful that announcements of the hearings will be given sufficient attention to draw a broad spectrum of interest to the hearing.

Best personal regards.

Very truly yours,


 George E. Radosevich

GER/sg

encl.

98TH CONGRESS
1ST SESSION

H. R. 1510

[Report No. 98-115, Part I]

To revise and reform the Immigration and Nationality Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 1983

Mr. MAZZOLI introduced the following bill; which was referred to the Committee on the Judiciary

MAY 13, 1983

Additional sponsors: Mr. ALEXANDER, Mr. ERLBORN, and Mr. LUKEN

MAY 13, 1983

Reported with an amendment, referred to the Committees on Agriculture, Education and Labor, Energy and Commerce, and Ways and Means for a period ending not later than June 27, 1983, for consideration of such provisions of the bill and amendment as fall within the jurisdictions of those committees pursuant to clauses 1 (a), (g), (h), and (v) of rule X, respectively

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 17, 1983]

A BILL

To revise and reform the Immigration and Nationality Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SHORT TITLE; REFERENCES IN ACT**

2 *SECTION 1. (a) This Act may be cited as the "Immi-*
 3 *gration Reform and Control Act of 1983".*

4 *(b) Except as otherwise specifically provided, whenever*
 5 *in this Act an amendment or repeal is expressed in terms of*
 6 *an amendment to, or repeal of, a section or other provision,*
 7 *the reference shall be considered to be made to a section or*
 8 *other provision of the Immigration and Nationality Act.*

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PART A—IMMIGRANTS

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PART B—NONIMMIGRANTS

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**TITLE IV—EXTENDED VOLUNTARY DEPARTURE FOR
SALVADORANS**

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TITLE I—CONTROL OF ILLEGAL

IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

“UNLAWFUL EMPLOYMENT OF ALIENS

“SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee or other consideration, for employment in the United States—

“(A) an alien knowing the alien is an unauthorized alien (as defined in paragraph (4)) with respect to such employment, or

“(B) an individual without complying with the requirements of subsection (b).

1 *Subparagraph (B) shall not apply to a person or entity until*
2 *the Attorney General, based upon evidence or information he*
3 *deems persuasive, has notified the person or entity in writing*
4 *that the person or entity has in his employ (or has referred or*
5 *recruited) an unauthorized alien and the person or entity is*
6 *thereafter required to comply with the requirements of sub-*
7 *paragraph (B), except that any such person that voluntarily*
8 *complies with such requirements before the date of such noti-*
9 *fication must comply with such requirements for all individ-*
10 *uals with respect to which such requirements may apply.*

11 “(2) *It is unlawful for a person or other entity, after*
12 *hiring an alien for employment subsequent to the date of the*
13 *enactment of this section and in accordance with paragraph*
14 *(1), to continue to employ the alien in the United States*
15 *knowing the alien is (or has become) an unauthorized alien*
16 *with respect to such employment.*

17 “(3) *A person or entity that establishes that it has com-*
18 *plied in good faith with the requirements of subsection (b)*
19 *with respect to the hiring, recruiting, or referral for employ-*
20 *ment of an alien in the United States and has established an*
21 *affirmative defense that the person or entity has not violated*
22 *paragraph (1)(A) with respect to such hiring, recruiting, or*
23 *referral.*

24 “(4) *As used in this section, the term ‘unauthorized*
25 *alien’ means, with respect to the employment of an alien at a*

1 particular time, that the alien is not at that time either (A)
2 an alien lawfully admitted for permanent residence, or (B)
3 authorized to be so employed by this Act or by the Attorney
4 General.

5 “(5) For purposes of paragraphs (1)(B) and (3), a
6 person or entity shall be deemed to have complied with the
7 requirements of subsection (b) with respect to the hiring of an
8 individual who was referred for such employment by a State
9 employment agency (as defined by the Attorney General), if
10 the person or entity has and retains (for the period and in the
11 manner described in subsection (b)(3)) appropriate documen-
12 tation of such referral by that agency, which documentation
13 certifies that the agency has complied with the procedures
14 specified in subsection (b) with respect to the individual’s
15 referral.

16 “(b) Except as provided in subsection (c), the require-
17 ments and procedures referred to in paragraphs (1)(B), (3),
18 and (5) of subsection (a) are, in the case of a person or other
19 entity hiring, recruiting, or referring an individual for em-
20 ployment in the United States, that—

21 “(1) the person or entity must attest, under penal-
22 ty of perjury and on a form designated or established
23 by the Attorney General by regulation, that it has veri-
24 fied that the individual is eligible to be employed (or

1 *recruited or referred for employment) in the United*
2 *States by examining the individual's—*

3 *“(A) United States passport, or*

4 *“(B)(i) social security account number card*
5 *or certificate of birth in the United States or es-*
6 *tablishing United States nationality at birth, and*

7 *“(ii)(I) alien documentation, identification,*
8 *and telecommunication card, or similar alien reg-*
9 *istration card issued by the Attorney General to*
10 *aliens and designated for use for this purpose,*

11 *“(II) driver's license or similar document*
12 *issued for the purpose of identification by a State,*
13 *if it contains a photograph of the individual or*
14 *such other personal identifying information relat-*
15 *ing to the individual as the Attorney General*
16 *finds, by regulation, sufficient for purposes of this*
17 *section, or*

18 *“(III) in the case of individuals under six-*
19 *teen years of age or in a State which does not*
20 *provide for issuance of an identification document*
21 *(other than a driver's license) referred to in sub-*
22 *clause (II), documentation of personal identity of*
23 *such other type as the Attorney General finds, by*
24 *regulation, provides a reliable means of identifica-*
25 *tion;*

1 “(2) the individual must attest, on the form desig-
2 nated or established for purposes of paragraph (1), that
3 the individual is a citizen or national of the United
4 States, an alien lawfully admitted for permanent resi-
5 dence, or an alien who is authorized under this Act or
6 by the Attorney General to be hired, recruited, or re-
7 ferred for such employment; and

8 “(3) after completion of such form in accordance
9 with paragraphs (1) and (2), the person or entity must
10 retain the form and make it available for inspection by
11 officers of the Service or of the Department of Labor
12 during a period beginning on the date of the hiring, re-
13 cruiting, or referral of the individual and ending—

14 “(A) in the case of the recruiting or referral
15 (without hiring) of an individual, three years
16 after the date of such recruiting or referral, and

17 “(B) in the case of the hiring of an indi-
18 vidual—

19 “(i) three years after the date of such
20 hiring, or

21 “(ii) one year after the date the individ-
22 ual’s employment is terminated,
23 whichever is later.

24 A person or entity has complied with paragraph (1) with re-
25 spect to examination of a document if the document reason-

1 ably appears on its face to be genuine. Notwithstanding any
2 other provision of law, the person or entity may copy a docu-
3 ment presented by an individual pursuant to this subsection
4 and may retain the copy, but only (except as otherwise per-
5 mitted under law) for the purpose of complying with the re-
6 quirements of this subsection. A person or entity has com-
7 plied with the requirements of this subsection, with respect to
8 the hiring of an individual, if the requirements of this subsec-
9 tion are first met not later than noon of the day following the
10 day on which the individual is first employed by that person
11 or entity. A form designated or established by the Attorney
12 General under this subsection and any information con-
13 tained in or appended to such form, may not be used for
14 purposes other than for enforcement of this section or section
15 1546 of title 18, United States Code.

16 “(c)(1)(A) Within three years after the date of the en-
17 actment of this section, the President shall study and report
18 to the Congress concerning the possible need for and costs of
19 changes in or additions to the requirements of subsection (b)
20 as conform to the requirements of paragraph (2) of this sub-
21 section and as may be necessary to establish a secure system
22 to determine employment eligibility in the United States. In
23 considering possible changes or additions, the President shall
24 consider use of a telephone verification system.

1 “(B) Nothing in this subsection shall be construed to
2 authorize, directly or indirectly, the issuance or use of na-
3 tional identification cards.

4 “(2) Such changes or additions shall be designed in a
5 manner so that—

6 “(A) personal information utilized by the system
7 is available only to employers, recruiters, and referrers
8 for employment and to Government agencies and only
9 to the extent necessary for the purpose of verifying that
10 an individual is not an unauthorized alien,

11 “(B) if the changes or additions provide a verifi-
12 cation method to determine an individual's eligibility
13 to be employed in the United States—

14 “(i) the verification may not be withheld for
15 any reason other than that the individual is an
16 unauthorized alien, and

17 “(ii) the verification method may not be used
18 for law enforcement purposes (other than for en-
19 forcement of this section or section 1546 of title
20 18, United States Code), and

21 “(C) if the system requires individuals to present
22 a card or other document designed specifically for use
23 for this purpose at the time of hiring, recruitment, or
24 referral, then such document may not be required (i) to
25 be presented for any purpose other than under this sec-

1 *tion (or enforcement of section 1546 of title 18, United*
2 *States Code) or (ii) to be carried on one's person.*

3 *“(d)(1)(A) In the case of a person or entity which has*
4 *not previously been cited under this subparagraph, if the At-*
5 *torney General, based on evidence or information he deems*
6 *persuasive, reasonably concludes that the person or entity has*
7 *hired, or has recruited or referred for a fee or other considera-*
8 *tion, for employment in the United States an unauthorized*
9 *alien, the Attorney General may serve a citation on the*
10 *person or entity containing a notification that the alien's em-*
11 *ployment is not authorized and a warning of the penalties*
12 *and injunctive remedy set forth in this subsection.*

13 *“(B) In the case of a person or entity which has previ-*
14 *ously been cited under subparagraph (A), which is deter-*
15 *mined (after notice and opportunity for an administrative*
16 *hearing under paragraph (4)(A)(i)) to have violated para-*
17 *graph (1)(A) or (2) of subsection (a), and which—*

18 *“(i) has not previously been subject to a civil pen-*
19 *alty under this subparagraph, the person or entity shall*
20 *be subject to a civil penalty of \$1,000 for each unau-*
21 *thorized alien with respect to which the violation oc-*
22 *curred, or*

23 *“(ii) has previously been subject to a civil penalty*
24 *under this subparagraph in one or more instances, the*
25 *person or entity shall be subject to a civil penalty of*

1 \$2,000 for each unauthorized alien with respect to
2 which the violation occurred.

3 “(C) A person or entity which violates paragraph (1)(A)
4 or (2) of subsection (a) and which has previously been subject
5 to a civil penalty under subparagraph (B) in two or more
6 instances shall be fined not more than \$3,000, imprisoned
7 not more than one year, or both, for each unauthorized alien
8 with respect to which the violation occurred.

9 “(2) Whenever the Attorney General has reasonable
10 cause to believe that a person or entity is engaged in a pat-
11 tern or practice of employment, recruitment, or referral in
12 violation of paragraph (1)(A) or (2) of subsection (a), the
13 Attorney General may bring a civil action in the United
14 States district court for the district in which the person or
15 entity resides or in which the violation occurred requesting
16 such relief, including a permanent or temporary injunction,
17 restraining order, or other order against the person or entity,
18 as the Attorney General deems necessary.

19 “(3) A person or entity which is determined (after notice
20 and opportunity for an administrative hearing under para-
21 graph (4)(A)(i)) to have violated subsection (a)(1)(B) shall be
22 subject to a civil penalty of \$500 for each individual with
23 respect to which such violation occurred.

24 “(4)(A)(i) Before issuing a citation on, or imposing a
25 civil penalty against, a person or entity under this subsection

1 *for a violation of subsection (a), the Attorney General shall*
2 *provide the person or entity with notice and, upon request*
3 *made within a reasonable time (of not less than thirty days,*
4 *as established by the Attorney General) of the date of the*
5 *notice, a hearing respecting the violation.*

6 “(ii) *Any hearing so requested shall be conducted before*
7 *an administrative law judge. The hearing shall be conducted*
8 *in accordance with the requirements of section 554 of title 5,*
9 *United States Code and rules of the United States Immigra-*
10 *tion Board established under section 107. The hearing shall*
11 *be held within two hundred miles of the place where the*
12 *person or entity resides or of the place where the alleged vio-*
13 *lation occurred. If no hearing is so requested, the assessment*
14 *shall constitute a final and unappealable order.*

15 “(iii) *A person or entity (including the Attorney Gener-*
16 *al) adversely affected by a final order respecting an assess-*
17 *ment may, within sixty days after the date the final order is*
18 *issued, file a petition in the Court of Appeals for the appro-*
19 *priate circuit for review of the order.*

20 “(B)(i) *If the person or entity against whom a civil pen-*
21 *alty is assessed fails to pay the penalty within the time pre-*
22 *scribed in such order, the Attorney General shall file a suit to*
23 *collect the amount in the United States district court for the*
24 *district in which the person or entity resides or in which the*

1 *violation (with respect to which the penalty was assessed)*
2 *occurred.*

3 “(ii) *In any suit described in clause (i) based on an*
4 *assessment—*

5 “(I) *made after a hearing before an administra-*
6 *tive law judge, the suit shall be determined solely upon*
7 *the administrative record upon which the civil penalty*
8 *was assessed and the administrative law judge’s find-*
9 *ings of fact, if supported by substantial evidence on the*
10 *record considered as a whole, shall be conclusive, or*

11 “(II) *for which a timely request for a hearing*
12 *was not made, the validity and appropriateness of the*
13 *final order imposing the assessment shall not be subject*
14 *to review.*

15 “(5)(A) *In determining the level of sanction that is ap-*
16 *plicable under paragraph (1) for violations of paragraph*
17 *(1)(A) or (2) of subsection (a), determinations of more than*
18 *one violation in the course of a single proceeding or adjudica-*
19 *tion shall be counted as a single determination.*

20 “(B) *In applying this subsection in the case of a person*
21 *or entity composed of distinct, physically separate subdivi-*
22 *sions each of which provides separately for the hiring, re-*
23 *cruiting, or referral for employment without reference to the*
24 *practices of, or under the control of, or common control with,*

1 another subdivision, each such subdivision shall be consid-
2 ered a separate person or entity.

3 “(e) In providing documentation or endorsement of au-
4 thorization of aliens (other than aliens lawfully admitted for
5 permanent residence) authorized to be employed in the
6 United States, the Attorney General shall provide that any
7 limitations with respect to the period or type of employment
8 or employer shall be conspicuously stated on the documenta-
9 tion or endorsement.

10 “(f) The provisions of this section preempt any State or
11 local law imposing civil or criminal sanctions upon those who
12 employ, or recruit or refer for a fee or other consideration for
13 employment, unauthorized aliens.

14 “(g)(1) The President shall monitor, and shall consult
15 with the Congress every six months concerning, the imple-
16 mentation of this section (including the effectiveness of the
17 verification and recordkeeping system described in subsection
18 (b) and the status of the changes and additions described in
19 subsection (c)) and the impact of this section on the economy
20 of the United States and on employment (including discrimi-
21 nation in employment) of citizens and aliens in the United
22 States, on the illegal entry of aliens into the United States,
23 and on the failure of aliens who have legally entered the
24 United States to remain in legal status.

1 “(2)(A) *The Civil Rights Commission shall monitor the*
2 *implementation and enforcement of the provisions of this sec-*
3 *tion and shall investigate allegations that the enforcement or*
4 *implementation of this section has been conducted in a*
5 *manner that results in unlawful discrimination by race or*
6 *nationality against citizens of the United States or aliens*
7 *who are not unauthorized aliens (as defined in subsection*
8 *(a)(4)).*

9 “(B) *The Civil Rights Commission, not later than*
10 *eighteen months after the month in which this section is en-*
11 *acted, shall prepare and transmit to the Committees on the*
12 *Judiciary of the House of Representatives and of the Senate*
13 *a report describing the implementation and enforcement of*
14 *the provisions of this section during the preceding period, for*
15 *the purpose of determining if a pattern of such unlawful dis-*
16 *crimination has resulted. Two more such reports shall be pre-*
17 *pared and transmitted thirty-six and fifty-four months after*
18 *the month in which this section is enacted.*

19 “(3) *The Attorney General, jointly with the Secretary*
20 *of Labor and the Chairman of the Equal Employment Op-*
21 *portunity Commission, shall establish a taskforce to monitor*
22 *the implementation of this section and to review and investi-*
23 *gate complaints registered of employment discrimination*
24 *which may be attributable to the operation of this section.”.*

1 (2)(A) *No citation, civil or criminal penalty, or injunc-*
2 *tion may be issued under section 274A of the Immigration*
3 *and Nationality Act for the hiring, or recruiting or referring*
4 *for a fee or other consideration, for employment of individ-*
5 *uals occurring before the first day of the seventh month begin-*
6 *ning after the date of the enactment of this Act.*

7 (B) *During the one-year period beginning on the date of*
8 *the enactment of this Act, the Attorney General, in coopera-*
9 *tion with the Secretaries of Agriculture, Commerce, Health*
10 *and Human Services, Labor, and the Treasury and the Ad-*
11 *ministrator of the Small Business Administration, shall dis-*
12 *seminate forms and information to employers, employment*
13 *agencies, and organizations representing employees and pro-*
14 *vide for public education respecting the requirements of sec-*
15 *tion 274A of the Immigration and Nationality Act.*

16 (C) *The Attorney General shall, not later than the first*
17 *day of the seventh month beginning after the date of the en-*
18 *actment of this Act, first issue, on an interim or other basis,*
19 *such regulations as may be necessary in order to implement*
20 *section 274A of the Immigration and Nationality Act.*

21 (3) *The table of contents is amended by inserting after*
22 *the item relating to section 274 the following new item:*

"Sec. 274A. Unlawful employment of aliens."

23 (b)(1) *The Migrant and Seasonal Agricultural Worker*
24 *Protection Act (Public Law 97-470) is amended—*

1 (A) by striking out “101(a)(15)(H)(ii) and
2 214(c)” in paragraphs (8)(B) and (10)(B) of section 3
3 (29 U.S.C. 1802) and inserting in lieu thereof
4 “101(a)(15)(H)(ii)(a), 101(a)(15)(O), 214(c), and
5 214(e)”;

6 (B) in section 103(a) (29 U.S.C. 1813(a))—

7 (i) by striking out “or” at the end of para-
8 graph (4),

9 (ii) by striking out the period at the end of
10 paragraph (5) and inserting in lieu thereof “; or”,
11 and

12 (iii) by adding at the end the following new
13 paragraph:

14 “(6) has been found to have violated paragraph
15 (1) or (2) of section 274A(a) of the Immigration and
16 Nationality Act.”;

17 (C) by striking out section 106 (29 U.S.C. 1816)
18 and the corresponding item in the table of contents;
19 and

20 (D) by striking out “section 106” in section
21 501(b) (29 U.S.C. 1856(b)) and by inserting in lieu
22 thereof “paragraph (1) or (2) of section 274A(a) of the
23 Immigration and Nationality Act”.

24 (2) The amendments made by paragraph (1) shall apply
25 to the employment, recruitment, referral, or utilization of the

1 *services of an individual occurring on or after the first day of*
2 *the seventh month beginning after the date of the enactment of*
3 *this Act.*

4 **FRAUD AND MISUSE OF CERTAIN DOCUMENTS**

5 **SEC. 102. (a) Section 1546 of title 18, United States**
6 **Code, is amended—**

7 **(1) by amending the heading to read as follows:**
8 ***“§1546. Fraud and misuse of visas, permits, and other***
9 ***documents”;***

10 **(2) by striking out “or other document required**
11 ***for entry into the United States” in the first paragraph***
12 ***and inserting in lieu thereof “border crossing card,***
13 ***alien registration receipt card, or other document pre-***
14 ***scribed by statute or regulation for entry into or as evi-***
15 ***dence of authorized stay or employment in the United***
16 ***States”;***

17 **(3) by striking out “or document” in the first**
18 ***paragraph and inserting in lieu thereof “border cross-***
19 ***ing card, alien registration receipt card, or other docu-***
20 ***ment prescribed by statute or regulation for entry into***
21 ***or as evidence of authorized stay or employment in the***
22 ***United States”;***

23 **(4) by striking out “\$2,000” and inserting in lieu**
24 ***thereof “\$5,000”;***

1 (5) by inserting "(a)" before "Whoever" the first
2 place it appears, and

3 (6) by adding at the end the following new subsections:
4

5 "(b) Whoever knowingly uses an identification document
6 (other than one issued lawfully for the use of the possessor)
7 or a false identification document or a false attestation
8 for the purpose of satisfying a requirement of section 274A(b)
9 of the Immigration and Nationality Act, shall be fined not
10 more than \$5,000 or imprisoned not more than two years, or
11 both.

12 "(c) This section does not prohibit any lawfully authorized
13 investigative, protective, or intelligence activity of a law
14 enforcement agency of the United States, a State, or a subdivision
15 of a State, or of an intelligence agency of the United
16 States, or any activity authorized under title V of the Organized
17 Crime Control Act of 1970 (18 U.S.C. note prec.
18 3481)."

19 (b) The item relating to section 1546 in the table of
20 sections of chapter 75 of such title is amended to read as
21 follows:

 "1546. Fraud and misuse of visas, permits, and other documents."

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TITLE II—REFORM OF LEGAL IMMIGRATION

PART A—IMMIGRANTS

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PART B—NONIMMIGRANTS

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H-3 WORKERS AND TRANSITIONAL NONIMMIGRANT

13

AGRICULTURAL WORKER PROGRAM

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SEC. 211. (a)(1) Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country" in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, of a temporary or seasonal nature, or (b) to perform other temporary services or labor".

1 (2) Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as
2 amended by section 204(b) of this Act, is further amended by
3 striking out "or" at the end of subparagraph (M), by striking
4 out the period at the end of subparagraph (N) and inserting
5 in lieu thereof "; or", and by adding at the end the following
6 new subparagraph:

7 "(O) an alien having a residence in a foreign
8 country which he has no intention of abandoning who
9 is coming to the United States to perform temporary
10 services or labor in seasonal agricultural employment
11 (as defined in section 3(3) of the Migrant and Season-
12 al Agricultural Worker Protection Act) under the tran-
13 sitional agricultural labor program provided for under
14 section 214(e).".

15 (b) Section 214 (8 U.S.C. 1184) is amended—

16 (1) by adding at the end of subsection (a) the fol-
17 lowing new sentences:

18 "An alien may not be admitted to the United States as a
19 nonimmigrant—

20 "(1) under section 101(a)(15)(H)(ii)(a) for an ag-
21 gregate period longer than the period (or periods) deter-
22 mined by regulations of the Secretary of Labor, or

23 "(2) under section 101(a)(15)(H)(ii) if the alien
24 was admitted to the United States as such a nonimmi-
25 grant within the previous five-year period and the alien

1 *during that period violated a term or condition of such*
2 *previous admission.*

3 *The Attorney General shall provide for such endorsement of*
4 *entry and exit documents of nonimmigrants described in sec-*
5 *tion 101(a)(15)(H)(ii) as may be necessary to carry out this*
6 *section and to provide notice for purposes of section 274A.",*

7 *(2) by inserting "(1)" after "(c)" in subsection*
8 *(c),*

9 *(3) by adding at the end of subsection (c)(1), as*
10 *so redesignated, the following:*

11 *"For purposes of this paragraph the term 'appropriate agen-*
12 *cies of Government' means the Department of Labor and in-*
13 *cludes, with respect to nonimmigrants described in section*
14 *101(a)(15)(H)(ii)(a), the Department of Agriculture.*

15 *"(2)(A)(i) A petition to import an alien as a nonimmi-*
16 *grant under section 101(a)(15)(H)(ii)(a) may not be ap-*
17 *proved by the Attorney General unless the petitioner has ap-*
18 *plied to the Secretary of Labor for a certification that—*

19 *"(I) there are not sufficient workers who are able,*
20 *willing, and qualified and who will be available at the*
21 *time and place needed to perform the labor or services*
22 *involved in the petition, and*

23 *"(II) the employment of the alien in such labor or*
24 *services will not adversely affect the wages and work-*

1 *ing conditions of workers in the United States similar-*
2 *ly employed.*

3 *“(ii) A petition to import an alien as a nonimmigrant*
4 *under section 101(a)(15)(H)(ii)(b) may not be approved by*
5 *the Attorney General unless the petitioner has applied to the*
6 *Secretary of Labor for a certification that—*

7 *“(I) there are not sufficient qualified workers*
8 *available in the United States to perform the labor or*
9 *services involved in the petition, and*

10 *“(II) the employment of the alien in such labor or*
11 *services will not adversely affect the wages and work-*
12 *ing conditions of workers in the United States similar-*
13 *ly employed.*

14 *“(iii) The Secretary of Labor may require by regula-*
15 *tion, as a condition of issuing the certification, the payment*
16 *of a fee to recover the reasonable costs of processing applica-*
17 *tions for certification.*

18 *“(B) The Secretary of Labor may not issue a certifica-*
19 *tion under subparagraph (A)—*

20 *“(i) if there is a strike or lockout in the course of*
21 *a labor dispute which, under the regulations, precludes*
22 *such certification,*

23 *“(ii) with respect to an employer if the employer*
24 *during the previous two-year period employed nonim-*
25 *migrant aliens admitted to the United States under*

1 *section 101(a)(15)(H)(ii) and the Secretary of Labor*
2 *has determined, after notice and opportunity for a*
3 *hearing, that the employer at any time during that*
4 *period substantially violated a material term or condi-*
5 *tion of the labor certification with respect to the em-*
6 *ployment of domestic or nonimmigrant workers, or*
7 *“(iii) for an employer unless the Secretary has*
8 *been provided satisfactory assurances that if the em-*
9 *ployment for which the certification is sought is not*
10 *covered by State workers’ compensation law, the em-*
11 *ployer will provide, at no cost to the worker, insurance*
12 *covering injury and disease arising out of and in the*
13 *course of the worker’s employment which will provide*
14 *benefits at least equal to those provided under the State*
15 *workers’ compensation law for comparable employment.*
16 *No employer may be denied certification under clause (ii) for*
17 *more than three years for any violation described in such*
18 *clause.*

19 *“(3)(A) In the case of an application for a labor certifi-*
20 *cation for a nonimmigrant described in section*
21 *101(a)(15)(H)(ii)(a)—*

22 *“(i) the Secretary of Labor may not require that*
23 *the application be filed more than 50 days before the*
24 *first date the employer requires the labor or services of*
25 *the alien;*

1 “(ii) the employer shall be notified in writing
2 within seven days of the date of filing if the applica-
3 tion does not meet the standards (other than that de-
4 scribed in paragraph (2)(A)(i)(I)) for approval and if
5 it does not, such notice shall include the reasons there-
6 for and permit the employer an opportunity to resubmit
7 promptly a modified application for approval;

8 “(iii) the Secretary of Labor shall make, not later
9 than twenty days before the date such labor or services
10 are first required to be performed, the certification de-
11 scribed in paragraph (2)(A)(i) if the employer has com-
12 plied with the criteria for certification, including crite-
13 ria for the recruitment of eligible individuals as pre-
14 scribed by the Secretary, and if the employer does not
15 actually have, or has not been provided with referrals
16 of, qualified eligible individuals who have indicated
17 their availability to perform such labor or services on
18 the terms and conditions of a job offer which meets the
19 requirements of the Secretary, except that the terms of
20 such a labor certification remain effective only if the
21 employer continues to accept for employment, until the
22 date the aliens depart for work with the employer,
23 qualified eligible individuals who apply or are referred
24 to the employer; and

1 “(iv) in the employer’s complying with terms and
2 conditions of employment respecting the furnishing of
3 housing, the employer shall be permitted, at the em-
4 ployer’s option and in lieu of arranging for suitable
5 housing accommodations, to substitute payment of a rea-
6 sonable housing allowance, but only if housing is oth-
7 erwise available in the proximate area of employment.

8 “(B) A petition to import an alien as an nonimmigrant
9 described in section 101(a)(15)(H)(ii)(a), and an application
10 for a labor certification with respect to such an alien, may be
11 filed by an association representing agricultural producers
12 which use agricultural labor or services. The filing of such a
13 petition or application on a member’s behalf does not relieve
14 the member of any liability for representations made in such
15 petition or application.

16 “(C)(i) The Secretary of Labor shall provide for an ex-
17 pedited procedure for the review of a denial of certification
18 under paragraph (2)(A)(i) or, at the applicant’s request, for a
19 de novo administrative hearing respecting the denial.

20 “(ii) The Secretary of Labor shall expeditiously, but in
21 no case later than seventy-two hours after the time a new
22 determination is requested, make a new determination on the
23 request for certification in the case of importing a nonimmi-
24 grant described in section 101(a)(15)(H)(ii)(a) if able, will-
25 ing, and qualified eligible individuals are not actually avail-

1 able at the time such labor or services are required and a
2 certification was denied in whole or in part because of the
3 availability of qualified eligible individuals. If the employer
4 asserts that any eligible individuals who have been referred
5 are not able, willing or qualified, the burden of proof is on the
6 employer to establish that the individuals referred are not
7 able, willing, or qualified because of employment-related rea-
8 sons as shown by their job performance.

9 “(D) For purposes of this paragraph, the term ‘eligible
10 individual’ means, with respect to employment, an individual
11 who is not an unauthorized alien (as defined in section
12 274A(a)(4)) with respect to that employment.

13 “(4) The Secretary of Labor, in consultation with the
14 Attorney General and the Secretary of Agriculture, shall an-
15 nually report to the Congress on the certifications provided
16 under this subsection and on the work permits issued under
17 subsection (e), the impact of aliens admitted pursuant to such
18 certifications or permits on labor conditions in the United
19 States, and on compliance of employers and nonimmigrants
20 with the terms and conditions of such nonimmigrants’ admis-
21 sion to the United States.

22 “(5) There are authorized to be appropriated for each
23 fiscal year, beginning with fiscal year 1984, \$10,000,000 for
24 the purposes (A) of recruiting domestic workers for temporary
25 labor and services which might otherwise be performed by

1 *nonimmigrants described in sections 101(a)(15)(H)(ii) and*
 2 *101(a)(15)(O), and (B) of monitoring terms and conditions*
 3 *under which such nonimmigrants (and domestic workers em-*
 4 *ployed by the same employers) are employed in the United*
 5 *States. The Secretary of Labor is authorized to take such*
 6 *actions, including imposing appropriate penalties and seek-*
 7 *ing appropriate injunctive relief and specific performance of*
 8 *contractual obligations, as may be necessary to assure em-*
 9 *ployer compliance with terms and conditions of employment*
 10 *under this subsection or subsection (e).*

11 “(6) *There are authorized to be appropriated for each*
 12 *fiscal year, beginning with fiscal year 1984, such sums as*
 13 *may be necessary for the purpose of enabling the Secretary of*
 14 *Labor to make determinations and certifications under this*
 15 *subsection and under section 212(a)(14).”, and*

16 (4) *by adding at the end thereof the following new*
 17 *subsection:*

18 “(e)(1) *The Attorney General, in consultation with the*
 19 *Secretary of Labor and the Secretary of Agriculture, shall by*
 20 *regulation establish a three-year transitional agricultural*
 21 *labor program (hereinafter in this subsection referred to as*
 22 *‘the transitional program’) to assist agricultural employers in*
 23 *shifting from the employment of unauthorized aliens to the*
 24 *employment of eligible individuals (described in subsection*
 25 *(c)(3)(D)).*

1 “(2)(A) No person is eligible to employ a nonimmigrant
2 described in section 101(a)(15)(O) unless the person (or a
3 person or association representing the person) applies for reg-
4 istration with the Attorney General during the first year of
5 the transitional program (as designated by the Attorney Gen-
6 eral). In such application, the person shall provide such in-
7 formation relating to the person’s requirements for seasonal
8 agricultural labor in months or other periods in previous and
9 future years as the Attorney General may specify.

10 “(B) In approving applications for registration under
11 this paragraph and taking into consideration the needs speci-
12 fied in the applications, the historical employment needs of
13 agricultural employers for seasonal agricultural labor, and
14 the availability of domestic agricultural labor, the Attorney
15 General shall specify, with respect to each registration, the
16 maximum number of nonimmigrants described in section
17 101(a)(15)(O) the person can employ during the various
18 months in the first year of the transitional program, which
19 number shall approximate the employer’s maximum reason-
20 able requirement for nondomestic seasonal agricultural work-
21 ers. The approval of an employer’s application for registra-
22 tion under this paragraph and the issuance of work permits
23 thereunder is conditioned upon the employer’s compliance
24 with the terms and conditions of this subsection and regula-
25 tions issued thereunder.

1 “(C) If the Attorney General approves the employment
2 of a number of such nonimmigrants for a month or other
3 period in the first year of the transitional program, the Attor-
4 ney General shall issue to the employer a nonimmigrant
5 labor form (hereinafter in this subsection referred to as a
6 ‘work permit’) for each such nonimmigrant for the month or
7 other period specified. The Attorney General may require by
8 regulation, as a condition of issuing work permits, the pay-
9 ment of a fee to recover the reasonable cost of processing reg-
10 istration applications and issuance of work permits under
11 this subsection.

12 “(D) For months or other periods in the second or third
13 years of the transitional program, the Attorney General shall
14 provide for the issuance (to each registered employer who has
15 complied with the terms of the program and of the program
16 described in subsection (c) in previous years of the program)
17 of a number of work permits equal to 67 or 33 per centum,
18 respectively, of the number of such permits issued with re-
19 spect to that month or period for that employer in the first
20 year of the transitional program.

21 “(E) No work permit shall be issued under this subsec-
22 tion with respect to the employment of any alien for any
23 period after the third year of the transitional program.

24 “(3) An agricultural employer desiring to employ in
25 seasonal agricultural labor for a month or other period an

1 alien who is not otherwise an eligible individual (as described
2 in subsection (c)(3)(D), but for this subsection) must—

3 “(A)(i) complete and endorse a copy of a work
4 permit for that month or other period directly to the
5 alien, who shall retain a copy of the work permit for
6 inspection, (ii) transmit a copy of such endorsed permit
7 to the Attorney General, and (iii) retain a copy for the
8 employer’s records; or

9 “(B) provide for transmittal of the work permit to
10 an appropriate consular officer to provide for the issu-
11 ance of a visa to a qualified alien as a nonimmigrant
12 described in section 101(a)(15)(O) to perform seasonal
13 agricultural employment for that employer for the
14 period specified.

15 Upon the receipt of an endorsed copy of a work permit of an
16 alien under subparagraph (A), the Attorney General shall
17 provide for the recordation of the alien as a nonimmigrant
18 described in section 101(a)(15)(O), except that such recorda-
19 tion shall not prevent the deportation of the alien after the
20 expiration of the work permit or on any ground (other than
21 on the ground described in section 241(a)(2) or on the basis,
22 under section 241(a)(1), of being excludable at the time of
23 entry under paragraph (19), (20), or (26) of section 212(a)).

24 “(4)(A) An agricultural employer employing an alien
25 with a work permit must provide for the same wages and

1 *working conditions as those which would be required with*
2 *respect to the employment of nonimmigrants described in sec-*
3 *tion 101(a)(15)(H)(ii)(a), and, in the case of such an alien*
4 *described in paragraph (3)(B), must meet such other trans-*
5 *portation and similar conditions as are required with respect*
6 *to the importation of nonimmigrants described in section*
7 *101(a)(15)(H)(ii)(a).*

8 “(B) In accordance with regulations of the Attorney
9 General, a work permit issued under this section shall be
10 considered an alien registration card for purposes of section
11 274A(b)(1)(B)(ii)(I) and an alien employed by an employer
12 and in possession of a properly endorsed work permit for a
13 period of time shall be considered (for purposes of section
14 274A(a)(4)) to be authorized by the Attorney General to be
15 so employed during that period of time. For purposes of sec-
16 tion 3121(a)(1) of the Internal Revenue Code of 1954 and
17 section 210(a) of the Social Security Act, a nonimmigrant
18 described in section 101(a)(15)(O) performing seasonal agri-
19 cultural services for a registered employer with a properly
20 endorsed work permit shall be considered to be lawfully ad-
21 mitted to the United States on a temporary basis to perform
22 agricultural labor.

23 “(5)(A) The Attorney General may provide for such
24 suspensions and conditions on participation in the transition-
25 al program as are consistent with suspensions and conditions

1 of participation of agricultural employers under the program
2 described in subsection (c).

3 “(B) The Attorney General shall suspend the registra-
4 tion of an agricultural employer under the transitional pro-
5 gram, and may prohibit the employer from participating in
6 the program under subsection (c), for a period of up to three
7 years if the Attorney General determines, after opportunity
8 for a hearing, that the employer, during the previous two-year
9 period (after the effective date of the transitional program)—

10 “(i) has knowingly discriminated in terms or con-
11 ditions of employment against eligible individuals
12 without work permits,

13 “(ii) has knowingly hired aliens not permitted
14 under law to be so employed,

15 “(iii) has employed an alien classified or recorded
16 as a nonimmigrant described in section 101(a)(15)(O)
17 for services other than seasonal agricultural employ-
18 ment or for a period for which a work permit has not
19 been issued and is not in effect,

20 “(iv) has become ineligible for a certification
21 under subsection (c)(2)(B)(ii), or

22 “(v) otherwise has at any time during the period
23 substantially violated a material term or condition of
24 the registration with respect to the employment of do-
25 mestic or nonimmigrant workers.

1 “(6) Aliens employed pursuant to work permits issued
2 under this subsection are fully protected by all applicable
3 Federal and State laws and regulations governing the em-
4 ployment of migrant and seasonal agricultural workers.”.

5 (c) The amendments made by this section apply to peti-
6 tions and applications filed under section 214(c) of the Im-
7 migration and Nationality Act on or after the first day of the
8 seventh month beginning after the date of the enactment of
9 this Act (hereinafter in this section referred to as the “effec-
10 tive date”).

11 (d) The Attorney General, in consultation with the Sec-
12 retary of Labor and, in connection with agricultural labor or
13 services, the Secretary of Agriculture, shall approve all regu-
14 lations to be issued implementing the amendments made by
15 this section. Notwithstanding any other provision of law,
16 final regulations implementing the amendments made by this
17 section shall first be issued, on an interim or other basis, not
18 later than the effective date.

19 (e) The Secretary of Labor, in consultation with the At-
20 torney General and the Secretary of Agriculture, shall report
21 to the Congress not later than eighteen months after the effec-
22 tive date on recommendations for improvements in the tempo-
23 rary alien worker program amended by this section, includ-
24 ing recommendations—

1 (1) *improving the timeliness of decisions regard-*
2 *ing admission of temporary foreign workers under the*
3 *program,*

4 (2) *removing any current economic disincentives*
5 *to hiring United States citizens or permanent resident*
6 *aliens where temporary foreign workers have been re-*
7 *quested, and*

8 (3) *improving the cooperation among Government*
9 *agencies, employers, employer associations, workers,*
10 *unions, and other worker associations to end the de-*
11 *pendence of any industry on a constant supply of tem-*
12 *porary foreign workers.*

13 (f) *It is the sense of Congress that the President should*
14 *establish an advisory commission which shall consult with*
15 *the Governments of Mexico and of other appropriate coun-*
16 *tries and advise the Attorney General regarding the operation*
17 *of the alien temporary worker program established under sec-*
18 *tion 214(c) of the Immigration and Nationality Act and of*
19 *the transitional seasonal agricultural worker program under*
20 *section 214(e) of such Act.*

21 (g) *For amendments prohibiting nonimmigrants under*
22 *the seasonal agricultural worker program from adjusting*
23 *their status to immigrant or other nonimmigrant status, see*
24 *sections 212(b) and 213(d) of this Act.*

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18 *(d) Section 248 (8 U.S.C. 1258) is amended by strik-*
19 *ing out "and" at the end of paragraph (2), by striking out the*
20 *period at the end of paragraph (3) and inserting in lieu there-*
21 *of ", and" and by adding at the end thereof the following new*
22 *paragraph:*

23 *"(4) an alien classified as a nonimmigrant under*
24 *section 101(a)(15)(O) or admitted as a nonimmigrant*

1 *visitor without a visa under subsection (l) or (m) of*
2 *section 212."*

3 ***TITLE III—LEGALIZATION***

4 ***LEGALIZATION***

5 ***SEC. 301. (a) Chapter 5 of title II is amended by in-***
6 ***serting after section 245 (8 U.S.C. 1255) the following new***
7 ***section:***

8 ***"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS***
9 ***BEFORE JANUARY 1, 1982, TO THAT OF PERSON AD-***
10 ***MITTED FOR PERMANENT RESIDENCE***

11 ***"SEC. 245A. (a)***

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19 “(c)(1) During the five-year period beginning on the
20 date an alien is granted lawful permanent resident status
21 under subsection (a) and during the five-year period begin-
22 ning on the date an alien is provided a record of lawful ad-
23 mission for permanent residence under section 249 based on
24 an entry into the United States on or after June 30, 1948,
25 and notwithstanding any other provision of law—

1 “(A) except as provided in paragraph (2), the
2 alien is not eligible for—

3 “(i) any program of financial assistance fur-
4 nished under Federal law (whether through grant,
5 loan, guarantee, or otherwise) on the basis of fi-
6 nancial need, as such programs are identified by
7 the Attorney General in consultation with other
8 appropriate heads of the various departments and
9 agencies of Government,

10 “(ii) medical assistance under a State plan
11 approved under title XIX of the Social Security
12 Act, and

13 “(iii) assistance under the Food Stamp Act
14 of 1977, and

15 “(B) a State or political subdivision therein may,
16 to the extent consistent with subparagraph (A), provide
17 that the alien is not eligible for the programs of finan-
18 cial or medical assistance furnished under the law of
19 that State or political subdivision.

20 “(2) Paragraph (1) shall not apply—

21 “(A) to a Cuban and Haitian entrant (as defined
22 in paragraph (1) or (2)(A) of section 501(e) of Public
23 Law 96-422, as in effect on April 1, 1983);

24 “(B) in the case of assistance provided to aliens
25 who are determined (in accordance with regulations

1 *prescribed by the Attorney General in consultation*
2 *with the Secretary of Health and Human Services) to*
3 *require such assistance because of age (in the case of*
4 *aliens sixty-five years of age or older), blindness, or*
5 *disability, and*

6 *“(C) in the case of medical assistance provided to*
7 *aliens who are determined (in accordance with regula-*
8 *tions prescribed by the Attorney General in consulta-*
9 *tion with the Secretary of Health and Human Serv-*
10 *ices) to require such assistance in the interest of public*
11 *health or because of serious illness or injury.*

12 *The requirements of State plans under title XIX of the*
13 *Social Security Act are superceded to the extent required to*
14 *restrict the medical assistance in the manner described in*
15 *subparagraph (C) and paragraph (1)(A)(ii).*

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19 *“(c)(1) During the five-year period beginning on the*
20 *date an alien is granted lawful permanent resident status*
21 *under subsection (a) and during the five-year period begin-*
22 *ning on the date an alien is provided a record of lawful ad-*
23 *mission for permanent residence under section 249 based on*
24 *an entry into the United States on or after June 30, 1948,*
25 *and notwithstanding any other provision of law—*

1 “(A) except as provided in paragraph (2), the
2 alien is not eligible for—

3 “(i) any program of financial assistance fur-
4 nished under Federal law (whether through grant,
5 loan, guarantee, or otherwise) on the basis of fi-
6 nancial need, as such programs are identified by
7 the Attorney General in consultation with other
8 appropriate heads of the various departments and
9 agencies of Government,

10 “(ii) medical assistance under a State plan
11 approved under title XIX of the Social Security
12 Act, and

13 “(iii) assistance under the Food Stamp Act
14 of 1977, and

15 “(B) a State or political subdivision therein may,
16 to the extent consistent with subparagraph (A), provide
17 that the alien is not eligible for the programs of finan-
18 cial or medical assistance furnished under the law of
19 that State or political subdivision.

20 “(2) Paragraph (1) shall not apply—

21 “(A) to a Cuban and Haitian entrant (as defined
22 in paragraph (1) or (2)(A) of section 501(e) of Public
23 Law 96-422, as in effect on April 1, 1983);

24 “(B) in the case of assistance provided to aliens
25 who are determined (in accordance with regulations

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